United States Court of Appeals

for the Second Circuit

APPENDIX

75-2005

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

B
P/S

PAUL J. CARDAROPOLI, PETITIONER-APPELLEE

v.

JOHN J. NORTON, WARDEN, FEDERAL CORRECTIONAL INSTITUTION, DANBURY, CONNECTICUT, ET.AL.,

Respondents-Appellants

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF CONNECTICUT

JOINT APPENDIX

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Addendum

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

75-2005

PAUL J. CARDAROPOLI, PETITIONER-APPELLEE

v.

JOHN J. NORTON, WARDEN, FEDERAL CORRECTIONAL INSTITUTION, DANBURY, CONNECTICUT, ET.AL.,

Respondents-Appellants

RELEVANT DOCKET ENTRIES

DATE 1974	PROCEEDINGS	Date Order Judgment N
3/18	Order to Show Cause Why a Writ of Habeas Corpus Should Not Issue, filed and entered. Ordered that respondent show cause on or before 3/27/74; that petitioner be retained in custody within this district until further order of this Court; that service by the Marshal of Order, together with a copy of the verified petition be made on respondent, John J. Norton, Warden, on or before 3/19/74; that documents be filed without payment of the statutory filing fee; and further that Dennis E. Curtis, Esq., and Stephen Wizner, Esq., of the Jerome Frank Legal Services Organization, and Robert Davis, a law student intern, are appointed as counsel to represent the indigent petitioner. ZAMPANO, J. M-3/18/74 Copies to counsel.(Attys. Curtis, Wizner and Law Student Intern Davis.)	
3/18	Petition for Writ of Habeas Corpus, filed. (Copy to Atty. Curtis)	
3/18	Motion to Proceed in Forma Pauperis, filed by petitioner.	
3/18	Affidavit in Support of Motion to Proceed in Forma Pauperis, filed.	
3/18	Motion for the Appointment of Counsel, filed by petitioner.	
3/18	Attested copies of Order to Show Cause, copies of Petition and Form 285 (2) handed to the Marshal for service on Warden Norton and U. S. Attorney.	
3/21	Marshal's Return Showing Service, filed. (Petition and OSC) (Neil Aiello, Admin. Asst. for Warden Norton, 3/19/74)	
3/21	Marshal's Return Showing Service, filed. (Petition and OSC) (Helen Geier, Sec., for U. S. Attorney, 3/19/74)	

D. C. 110 Rev. Civil Docket Continuation

DATE 1974	PROCEEDINGS	Date Judgme
3/25	CJA Form 20, executed by Judge Zampano, appointing Jerome Frank Legal Services Organization as counsel for petitioner, Paul J. Cardaropoli, filed. Copies mailed Jerome Frank Legal Services Organization and Administrative Office.	
3/27	Government's Response to Order to Show Cause Why a Writ of Habeas Corpus Should Not Issue, filed.	
3/28	Appearance of Peter Mear, Esq., entered for defendant, John J. Norton, Warden.	
4/9	Petitioner's Reply to Government's Response to Order to Show Cause Why a Writ of Habeas Corpus Should Not Issue, filed.	
6/19	O R D E R, filed and entered. The Court having been informed by petitioner that the Court's Show Cause Order of 3/18/74, is now operating to deny him furlough privileges, it is hereby ORDERED that paragraph three of said order (which retains petitioner in custody within this district) is amended to permit a grant of furlough, release on parole or transfer to a Halfway House. ZAMPANO, J. M-6/19/74 Copies to Atty.Curtis,Warden Norton (cert. copy) and Asst. U. S. Atty. Mear, and RCZ, also Atty. Wizner and Law Student Intern Robert Davis.	
7/19	Petitioner's Supplementary Reply to Government's Response to Order to Show Cause Why a Writ of Habeas Corpus Should Not issue, filed.	
10/17	Memorandum of Decision, filed and entered. Petitioner complains that he has been designated a "Special Case". Since this violates the Catalano Case, it is ordered that it be expunged and the respondents are enjoined from reclassifying him as such unless due process is followed as set forth in the Catalano Case. ZAMPANO, J. M-10/22/74 Copies to Attys. Curtis and Wizner, Law Student Intern Davis, Warden Norton, U. S. Atty. Asst. Mear, MJB, TEC, RCZ, JON, AHL and U. Conn. Law Review.	
10/24	Judgment, filed and entered. It is accordingly ORDERED, ADJUDGED and DECREED that judgment be and is hereby entered in favor of the petitioner as follows: 1. That the respondents forthwith remove and totally expunge the "Special Case" classification from all records and files maintained by the Bureau of Prisons or by any of its institutions with respect to petitioner; 2. That the respondents are hereby enjoined from reclassifying petitioner as a "Special Case"unless he is accorded procedural due process as set forth in Catalano v. United States. Markowski, C. M-10/25/74 Copies to Attys. Curtis and Wizner, Law Student Intern Davis, Warden Norton and Asst. U. S. Atty. Mear.	
11/22	Motion for Permission to Appear Pro Hac Vice (Pierce H. O'Donnell), filed by Atty. Curtis.	
11/22	Law Student Intern Appearance Form of Eric A. Schwartz, filed on behalf of petitioner.	

DATE 1974	PROCEEDINGS	Date Ord Judgment
11/22	Application for Supplemental Relief, filed by petitioner. [illegible] 11-27-74 [illegible] Fld. 12-23-74 at 2:43 PM —	
12/19	Defendants' Notice of Appeal from Final Judgment, filed.	
12/19	Copy of Civil Appeals Management Plan, Forms C & D handed to Atty. Maxwell. (Sent)	
12/19	Cert. Copy of Docket Entries and Cert. copy of Notice of Appeal sent A. Daniel Fusaro, Clerk, U.S.C.A.	
12/19	Copies of Notice of Appeal sent Attys. Curtis, Wizner and Law Student Intern Davis. Cert. copy to Warden Norton.	
12/23	Per Misc.CAL. of R.C.Z. - Application for Release on Recognizance (Hearing of 11/25 continued) - HEARING CONTINUED. M-12/24/74. (Russell, R., Thorner, D.C.)	
12/26	Order to Show Cause Why Relief Should Not Be GRanted, filed and entered. Ordered that respondent herein show cause on or before Dec. 30, 1974, why supplemental relief should not be granted; that petitioner be retained in custody within this district until further order or until petitioner is granted a furlough, released on parole or transferred to a Halfway house; that service by U.S. Marshal of O.S.C. and petition on respondent Norton, on or before 12/26/74. ZAMPANO, J. M-12/26/74.	
12/26	Attested copies of O.S.C. handed to Marshal at New Haven for service.	
12/30	Government's Response to Order to Show Cause, filed.	
12/30	Marshal's return showing service, filed. Order to Show Cause. Copy handed to P. Corbett, U.S. Attorney's office, and copy mailed to Warden, F.C.I., Danbury, Ct. Date of service - 12/26/74.	
12/30	Court Reporter's Notes of proceedings held Dec.23,1974, at New Haven, filed at New Haven. (Russell,R.)	
1975		
1/23	Petitioner's Reply to Government's Response to an Order to Show Cause, filed.	

MOTION FOR TEMPORARY RESTRAINING ORDER
AND ORDER TO SHOW CAUSE FOR A PRELIMINARY INJUNCTION

Comes now Paul J. Cardaropoli, the petitioner in the above entitled action, and respectfully requests this honorable court to grant him the relief that he seeks and in support thereof states the following:

I. JURISDICTION

This is a civil action authorized by 42 U.S.C. sec. 1983 to redress the deprivation, under color of law, of rights secured by the Constitutuion of the United States. This Court has jurisdiction under 28 U.S.C. sec. 1343. Petitioner seeks immediate relief pursuant to Rule 65 of the Federal Rules of Civil Procedure.

II. PETITIONER

The petitioner, Paul J. Cardaropoli, is a Federal prisoner and in the custody of the Attorney General of the United States. Petitioner is currently confined at the F.C.I. In Danbury, Ct., under the custody of the Warden, John J. Norton. Petitioner is eligiable for release on parole under Federal Law and is scheduled to appear before the U. S. Federal Board of Parole in March of 1974 for a parole release hearing.

III. RESPONDENTS

1. Respondent Carlson is the Director of the Federal Bureau of Prisons. He is legally responsible for the ober-all operation of the Department and each institution under its jurisdiction, including F.C.I., DANBURY, CT.

2. Respondent Norton IV. the Warden of the F.C.I. In Danbury, Ct.

He is legally responsible for the operation of this prison and for the welfare of all the inmates of this prison.

3. Respondent Key was, the Chief of Classification and Parole and is alledged to be the one responsible for labeling petitioner as a "special case". Respondent Key left the F.C.I. here in Danbury, Ct. on or about August of 1973. At the present time petitioner does not have access to his present adress or weather he is still employed by the Federal Bureau of Prisons.

4. Respondent Fine is the casemanager for the petitioner at the present time and is responsible for preparing and presenting petitioner's case for consideration before the U. S. Federal Parole Board in March of 1974.

IV. FACTS

On or about September, 1973, petitioner was placed on call-out for interveiw by the respondent Fine to discuss possible application for a parole hearing. At this time, petitioner noticed the words "SPECIAL CASE" stamped in black lettering on his record folder. Petitioner later inquired from respondent Fine what the title "SPECIAL CASE" meant. Respondent Fine then stated that someone in the institution had classified petitioner as a "SPECIAL CASE" because of the place where he worked in the community was considered a "house of ill repute". Upon further questioning, respondent Fine refused to devulge the name of the person who had classified and labeled petitioner as a "SPECIAL CASE".

V. EXAUSTION OF ADMINISTRATIVE REMEDIES

On November 29, 1973, petitioner submitted a request for Administrative Remedy (see attached) to the Warden to inquire of his status as a "SPECIAL CASE". In response to the aforementioned request, petitioner was informed by the Assoc. Warden that he had been designated a "SPECIAL CASE" by theBureau of Prisons Central Office acting on the recommendation of the Chief of Classification & Parole at THE F.C.I., Danbury, Ct.(see attch)

On December 5, 1973, petitioner submitted a further request for Administrative Remedy to Norman A. Carlson, Director of the

Federal Bureau of Prisons requesting the classification as a "SPECIAL CASE" be removed from his file and record. (see attach

On January 4, 1974, petitioner received a reply to his request for Administrative Remedy to Norman Carlson from a James A. Finey, Administrative Officer of the Bureau of Prisons, stating that petitioner should have his complaint reviewed by the staff at Danbury, Ct. (see attached)

It should be noted here and now that this isthe old administrative run around trick. Petitioner had properly exausted his institutional remedies before appealing to the Director of the Bureau of Prisons.

VI. LEGAL CLAIMS

1. Petitioner has been and isstill currently deprived of his right to Equal Protbction under the law which is quaranteed by the Fourteenth Amendment to the United States Constitution without Due Process of law which is also required by the Fourteenth Amendment to the United States Constitution.

2. Petitioner states that he is being discriminated against fo no just cause nor apparent reason which has far reaching effect that constitute cruel and unusual punishment in violation of th Eighth Amendment to the United States Constitution.

3. Petitioner furhter states that his illegal classification by respondents as a "SPECIAL CASE" reduces his chances for paro makes him ineligihble for institutional work-release, makes him ineligiable for a community treatment center program, and sever minimizes his chances for a custody change and institutional furloughs.

4. Petitioner further states that if a Temporary Restraining Order is not granted, petitioner will be forced to meet the Par Board classified with the stigma and label as a "SPECIAL CASE" which would result in "immediate and irreparable damage regarding his efforts to obtain a parole release in March of 1974.

5. Petitioner has no plain, adequate or complete remedy at law to redress the wrongs discribed herein. Petitioner has been an will continue to be irreparably injured by the conduct of the

respondents unless this court grant petitioner the immediate relief that he seeks.

WHEREFORE, the petitioner respectfully prays that this court will enter judgment granting him:

1. A TEMPORARY RESTRAINING ORDER which prohibits the respondents from classifying and labeling the petitioner as a "SPECIAL CASE" at his scheduled parole hearing in March of 1974.

2. AN ORDER for the respondents to show cause why the relief that petitioner seeks should not be granted.

3. A PRELIMINARY AND PERMANENT INJUNCTION WHICH:

(a) Requires respondent Carlson to remove from petitioner's central file and records any reference, letters, memorandum, papers, etc., that refers to the petitioner as a "SPECIAL CASE".

(b) Requires respondent Norton to remove from petitioner's institutional file and record any reference, letters, memorandums, papers, etc., that refers to the petitioner as a "SPECIAL CASE".

(c) Prevents the Federal Parole Board from considering any such references as a "SPECIAL CASE" in any way when they decide weather petitioner should be released on parole in March of 1974.

4. A COURT ORDER reguining respondent Fine to produce petitioner's pre-sentence report for inspection which petitioner needs to verify his claim for the relief that he seeks.

5. A COURT ORDER for an evidentiary hearing to determine probable cause regarding petitioner's request for a Show Cause Order and Preliminary Injunction.

Petitioner hereby requests that this honorable court to be a friend to the petitioner in protecting his rights in the interest of justice as the petitioner is a layman with only a layman's knowledge and understanding of the law.

WHEREBY the petitioner respectfully requests this honorable court to grant him the relief that he seeks and any further relief as this court may deem just and proper.

ORDER TO SHOW CAUSE WHY A WRIT
OF HABEAS CORPUS SHOULD NOT ISSUE

Upon the verified petition of petitioner, Paul J. Cardaropoli, for issuance of a writ of habeas corpus, it is

ORDERED, that the respondent herein show cause on or before March 27, 1974 [the undersigned having found good cause for allowing additional time pursuant to 28 U.S.C. § 2243] why a writ of habeas corpus should not issue herein as prayed for in said petition by filing a return certifying the true cause of the detention of the petitioner; and it is further

ORDERED, that the petitioner be retained in custody within this district until further order of this Court; and it is further

ORDERED, that service by the United States Marshal of the Order to Show Cause, together with a copy of the verified petition, on the respondent John J. Norton, Warden, on or before March 19, 1974, be deemed sufficient service; and it is further

ORDERED, that this Order and related documents be filed by the Clerk of the Court without payment of the statutory filing fee, pursuant to the provisions of 28 U.S.C. 1915.

Further, Dennis E. Curtis, Esq., and Stephen Wizner, Esq., of the Jerome Frank Legal Services Organization, and Robert Davis, a law student intern, are appointed as counsel to represent the indigent petitioner.

Dated at New Haven, Connecticut, this 13th day of March, 1974.

Robert C. Zampano
United States District Judge

GOVERNMENT'S RESPONSE TO ORDER TO SHOW CAUSE
WHY A WRIT OF HABEAS CORPUS SHOULD NOT ISSUE

This response is filed pursuant to an order of this Court directing respondent to show cause why a writ of habeas corpus should be dismissed for failure to state a claim upon which relief may be granted.

Petitioner was sentenced, on May 14, 1973, after trial, by Judge Solomon, sitting in the District of Massachusetts, to a 5 year term for distribution of narcotics. Petitioner began his sentence at Danbury F.C.I. on June 8, 1973.

Petitioner alleges that his file, maintained by the Bureau of Prisons, has been labelled "Special Case" and that this label reduces his chances for parole, makes him ineligible for work release, community treatment center and minimizes his chances for a custody change and institutional furloughs. Petitioner further appears to allege that said label is an arbitrary violation of his constitutional rights.

The respondent admits that petitioner's file has been labelled "Special Case". The label was affixed by the Bureau of Prisons and based upon information in the petitioner's file that he is a member of "organized crime." The information in the file consists of the familiar form 792, "Report on Convicted Prisoner by United States Attorney". The form 792, in petitioner's case, was prepared and submitted by Paul Coffey, Strike Force Attorney, Hartford, Connecticut. Mr. Coffey participated in the investigation and trial of the petitioner on the distribution of narcotics charge and based upon his extreme familiarity with the background of the petitioner, included the following observations in his form 792[1]. Mr. Coffey noted that the petitioner: (1) Associated with several well known organized crime figures in Western Massachusetts, (2) Owned and operated the Hideaway Lounge in Springfield, Massachusetts, a known center for prostitution and drug related offenses, (3) Was present

at the so called "Little Appalachia" meeting in Worcester, Massachusetts which was attended by every known organized crime figure from Massachusetts and Rhode Island.

The respondent contends that the "Special Case" label is not arbitrary in the petitioner's case in that it has a strong basis in fact. Further, there are good reasons for identifying members of organized crime to institutional officials. Considerations of public protection, prison discipline and rehabilitation make identification of members of organized crime a sound and valid policy. Since the label has a basis in fact as it applies to the petitioner and since the policy of labelling files where a prisoner is determined to be a member of organized crime is a reasonable exercise of the proper discretion of the Bureau of Prisons, the petition should be dismissed.

Further, the petition should be dismissed since the petitioner has demonstrated no harm arising out of the facts which he alleges. Petitioner is not ineligible for work-release or community treatment center as he alleges and petitioner's other claims are wholly speculative since he is not yet eligible for and therefore has not yet been denied or hindered from participating in any of the programs which he lists in paragraph 4 of part VI of his petition. With regard to consideration of parole by the Parole Board, the Parole Board is also in possession of Mr. Coffey's form 792 upon which petitioner's label is based. Here too, any claim that the Board will consider the label as opposed to its proper consideration of form 792 is extremely speculative and should be dismissed.

For the foregoing reasons, the petition should be dismissed.

FOOTNOTE

[1]Form 792's are distributed to the Board of Parole and to the institution at which sentence is served.

PETITIONERS REPLY TO GOVERNMENTS RESPONSE TO ORDER TO SHOW CAUSE WHY A WRIT OF HABEAS CORPUS SHOULD NOT ISSUE

Petitioner, presently an inmate at Danbury F.C.I., seeks removal of a SPECIAL CASE designation from his institutional files and other related relief. He alleges that as a consequence of having received this designation he has been denied access to a wide range of correctional programs, and has had his chances of receiving parole diminished.

Respondent admits that petitioner's file is labeled SPECIAL CASE, claiming that information purportedly contained in petitioner's form 792 ("Report on Convicted Prisoner by United States Attorney") establishes that petitioner is "a member of organized crime." Respondent claims that the report:

> noted that the petitioner: associated with several well known organized crime figures in Western Massachusetts, (2) Owned and operated the Hideway Lounge in Springfield, Massachusetts, a known center for prostitution and drug related offenses, (3) Was present at the so-called 'Little Appalachia' meeting in Worcester, Massachusetts which was attended by every known organized crime figure from Massachusetts and Rhode Island.

1. The claim that petitioner associated with organized crime figures is so vague as to defy detailed response; the allegation is a description -- a description without content, and administrative reliance on it is arbitrary and capricious. See Massiello v. Norton, 364 F. Supp. 1133 (D. Conn. 1973).

2. Petitioner denies categorically that he is or ever has been either the owner or the operator of the Hideway Lounge in Springfield, Massachusetts. Petitioner further denies respondent's characterization of said Hideway Lounge.

3. Petitioner categorically denies that he was at any meeting of organized crime figures, and specifically states that he did not attend the meeting described by respondent.

Petitioner thus renews his contention that the SPECIAL CASE designation as applied to him is arbitrary and without reasonable basis in fact.

Furthermore, respondent's assertions to the contrary notwithstanding, petitioner has already been injured by his SPECIAL CASE designation and has reason to believe that he will continue to be adversely affected in the future.

Petitioner's injury consists of two elements. First, when he was considered for parole in March 1974, he was treated as an original jurisdiction case, on the basis of his purported involvement with organized crime, and given en banc consideration in Washington, D.C. The ordinary parole procedure, of which petitioner was deprived, permits the inmate and his representative to meet with the Board's examiners at the institution where the inmate is confined. See 28 C.F.R. Part 2, as revised 38 F. Reg. No. 184 (September 24, 1973), §§ 2.15, 2.18.

A personal meeting with the decision-makers provides the inmate with an opportunity to explain his activities and achievements in the institution, and the decision-makers in turn have an opportunity to assess personally the inmate's demeanor and other subjective indices of rehabilitative progress. The inmate is able to call to the attention of the examiners

those aspects [illegible]s development which he believes are of particular importance, and the decision-makers have the reciprocal opportunity to inquire as to those items of significant interest to them. Finally, the institutional staff is available to supply needed clarification.

The en banc consideration provided for in original jurisdiction cases, see 28 C.F.R. Part 2, as revised 38 F. Reg. No. 184 (Sept. 24, 1973), § 2.22, deprives the inmate of direct and personal access to the decision-makers. Although a panel of examiners does hear the case at the institution, the panel does not dispose of the case. Their role is limited to submitting a summary of their encounter with the inmate, "and any additional comments that the hearing examiners may deem germane," id., to the five regional directors. "The Regional Directors . . . serve as the original decision-makers." Id.

The inmate is thus deprived of the opportunity to explain those things about himself which he considers important, and to respond to the doubts that the cold written record might create in the minds of the decision-makers.

The second element of injury already suffered by petitioner is the stigma that attaches to one described, even falsely, as a member of organized crime. Such an unfounded allegation wreaks severe and lasting damage on petitioner's reputation and on that of his family. It is also likely to affect adversely petitioner's employment opportunities on release from prison, and to subject him to unwarranted and close scrutiny of local law enforcement officials.

Petitioner also expects, on the basis of the experiences of other inmates and despite respondent's representations, that his SPECIAL CASE

designation will either deprive him entirely of such things as furloughs, halfway house transfers and community work programs, or delay substantially his effective eligibility for such correctional programs. This delay results from the requirement that the F.C.I. submit the inmate's requests to the central office of the Bureau of Prisons, Washington, D.C. for approval.

In regard to parole consideration, respondent's argument that the Board considers not the label, whether "organized crime" or the substitute used here, but the underlying data in form 792, is specious. Petitioner objects not only to the mere use of the label, but also to the deprivation following from the erroneous determination that he is a member of organized crime; it is of little difference to him whether the Parole Board makes such an erroneous determination for itself or whether it relies on the mistaken inference drawn from incorrect information by someone else, in this case the U.S. Strike Force Attorney in Hartford. See Government's Response, p. 1.

For the foregoing reasons, the petition should not be dismissed and the writ should issue.

ORDER

The Court having been informed by petitioner Paul Cardaropoli that the Court's Show Cause Order of March 13, 1974 is now operating to deny him furlough privileges, it is hereby

ORDERED, that paragraph three of said order [which retains petitioner in custody within this district] is amended to permit a grant of furlough, release on parole or transfer to a Halfway House.

Dated at New Haven, Connecticut, this 13th day of June, 1974.

Robert C. Zampano
United States District Judge

PETITIONER'S SUPPLEMENTARY REPLY TO GOVERNMENT'S RESPONSE TO ORDER TO SHOW CAUSE WHY A WRIT OF HABEAS CORPUS SHOULD NOT ISSUE

In his reply to the Government's Response to the Order to Show Cause, dated April 1974, petitioner alleged, on the basis of the experiences of other inmates and despite respondent's representations, that his SPECIAL CASE designation would deprive him entirely of access to a wide range of correctional programs, including furloughs. Petitioner's expectations have now come to fruition.

On June 27, 1974 petitioner filed a request for administrative remedy with the Warden of the Institution concerning his inability to obtain a furlough. This request was denied on July 11, 1974 because of petitioner's purported involvement with organized crime. A copy of the Warden's response is attached. Were petitioner not designated an organized crime figure, he would have little difficulty obtaining a furlough. He is 53 years old and has been a model and cooperative inmate at Danbury with a perfect disciplinary record. He has served more than one-third of his present sentence. He requested a furlough in order to be close to his family in Springfield, Massachusetts prior to a serious gall bladder operation on his wife in August. F.C.I. Danbury Policy Statement CT. 7300.31 provides, 5(b)(1):

> Furloughs may be granted for such purposes as:
>
> (1) To respond to specific family crisis/emergencies and/or urgent offender needs, when direct personal interaction appears best suited to accomplishment of correctional objectives.

The hospitalization of petitioner's wife presents such an emergency. His presence close to his family would provide much needed moral support to both his wife and children.

Respondent's contentions to the contrary notwithstanding, petitioner is continuing to be affected adversely by his SPECIAL CASE designation.

For the foregoing, the petition should not be dismissed and the writ should issue.

FEDERAL BUREAU OF PRISONS

REQUEST FOR ADMINISTRATIVE REMEDY

INSTRUCTIONS: TYPE OR USE BALL POINT PEN. IF MORE SPACE IS NEEDED USE ATTACHMENT SHEET IN TRIPLICATE

To: ___ Warden of Institution
___ Director, Bureau of Prisons

From: [redacted] 25251 FCI Pa.
LAST NAME, FIRST, MIDDLE INITIAL — REG. NO. — INSTITUTION

Part A—INMATE REQUEST

[redacted]

6/27/74
DATE

[redacted]
SIGNATURE OF REQUESTOR

Part B—RESPONSE

Your furlough application was considered by the team on 6/25/74 and denied on the basis that your presence in the community would attract undue attention due to the notoriety. The Advisory Committee concurred with the team's action on June 28, 1974.

Our furlough policy statement states that ordinarily, furloughs will not be granted for persons identified with large scale criminal activity....for persons whose presence in the community would attract undue attention or create unusual concern.... Therefore you were denied a furlough for the above reasons.

July 11, 1974
DATE

Chief C&D
SIGNATURE OF WARDEN OR DIRECTOR OR DESIGNEE

Associate Warden

ORIGINAL: TO BE RETURNED TO THE OFFENDER AFTER COMPLETION

J U D G M E N T

This cause came on for consideration on a petition for a Writ of Habeas Corpus and the Court having filed its Memorandum of Decision under date of October 17, 1974,

It is accordingly ORDERED, ADJUDGED and DECREED that judgment be and is hereby entered in favor of the petitioner as follows:

1. That the respondents forthwith remove and totally expunge the "Special Case" classification from all records and files maintained by the Bureau of Prisons or by any of its institutions with respect to petitioner;

2. That the respondents are hereby enjoined from re-classifying petitioner as a "Special Case" unless he is accorded procedural due process as set forth in Catalano v. United States.

Dated at Bridgeport, Connecticut, this 24th day of October, 1974.

SYLVESTER A. MARKOWSKI, Clerk

By Vincent R. DeRosa
Vincent R. DeRosa
Deputy in Charge

MEMORANDUM OF DECISION

Petitioner, presently incarcerated at the Federal Correctional Institution, Danbury, Connecticut, complains that he has been unlawfully designated a "Special Case" by prison authorities. Since petitioner was classified in violation of the principles enunciated in Catalano v. United States, _____F.Supp. _____(D.Conn. October 9, 1974), it is hereby ORDERED:

1. That the respondents forthwith remove and totally expunge the "Special Case" classification from all records and files maintained by the Bureau of Prisons or by any of its institutions with respect to petitioner;

2. That the respondents are hereby enjoined from re-classifying petitioner as a "Special Case" unless he is accorded procedural due process as set forth in Catalano v. United States, supra.

Dated at New Haven, Connecticut, this 17th day of October, 1974.

Robert C. Zampano
United States District Judge

APPLICATION FOR SUPPLEMENTAL RELIEF

I

Petitioner Paul J. Cardaropoli is incarcerated at the Federal Correctional Institution in Danbury, Connecticut and in the custody of respondent John J. Norton, Warden of that Institution. Within the past month, this Court has filed a Memorandum of Decision and entered a Judgment in the above-captioned case (copies of the Memorandum of Decision and Judgment are attached hereto), in which it ordered:

> 1. That the respondents forthwith remove and totally expunge the "Special Case" classification from all records and files maintained by the Bureau of Prisons or by any of its institutions with respect to petitioner;
>
> 2. That the respondents are hereby enjoined from reclassifying petitioner as a "Special Case" unless he is accorded procedural due process as set forth in Catalano v. United States.

On numerous prior occasions, petitioner has been denied furloughs, transfers, or other prison services or benefits solely because of the "Special Offender" designation. Since the date on which the Court issued its Memorandum of Decision and filed the Judgment in this case, the following events have transpired:

1. Petitioner, on or about November 1, 1974, filed with Danbury officials the appropriate administrative request, along with a copy of this Court's Memorandum of Decision and Judgment, seeking a furlough for Christmas to go to his home at 102 San Miguel St., Springfield, Massachusetts.

2. Petitioner is supervised by Classification and Reclassification Team C. In the ordinary course of processing furlough requests, petitioner's team, comprised of the case manager, a counselor, and the head of Danbury's education department, met with petitioner concerning his administrative request on November 12, 1974. Petitioner was approved for a furlough by his team.

3. On information and belief, on November 15, 1974, the F.C.I., Danbury Advisory Committee comprised of the Associate Warden Max Weger and two vocational employees, vetoed petitioner's furlough, giving as reasons his alleged degree of criminal sophistication and that his presence in the community would attract undue attention or notoriety.

II

Petitioner submits that no rational basis in fact or law supports the arbitrary and capricious actions taken by respondents. In support of this claim, petitioner alleges that:

4. Petitioner is 53 years old and has been incarcerated nineteen months on a 5-year sentence imposed pursuant to 18 U.S.C. §4208(a)(2). Since his arrival at Danbury he has been a model and cooperative inmate with a perfect disciplinary record and an excellent work record in the institution. Petitioner is not a dangerous criminal. He has never been convicted of a crime of violence.

5. His presence close to his family would provide much needed moral support to his three children and his wife, who may soon have to undergo a serious gall bladder operation.

6. His presence in the community would not create any unusual concern or attract undue public attention. There was never any broadcast media coverage of his conviction, and there was no mention of his conviction in the local newspaper until June 1973, nearly one month after he had been sentenced.

III

Petitioner maintains that respondents and their agents and employees have openly defied and continue to defy this Court's Memorandum of Decision and Judgment in this case and have violated their own regulations.

7. Respondents have failed to comply with this Court's order that they "forthwith remove and totally expunge the 'Special Offender' classifications from all records and files ..." It is not sufficient for respondents to go through transparent motions of physically removing the "Special Offender" stamp from petitioner's files and records. Catalano v. United States, requires that respondents remove all vestiges of the classification process declared unlawful by this Court. This necessarily encompasses any discriminatory or differential treatment occasioned by the former "Special Offender" classification. As this Court recognized in Catalano, "the consequences of a 'Special Offender' classification are significant ... [and] dire." Slip, at pp. 8, 10. Because petitioner has "a large stake in being eligible for these rehabilitative programs," respondents' evasive conduct and abusive treatment of petitioner constitutes further "'grievous loss.'" Id., at 12, 13.

8. In open contempt of this Court's orders respondents have launched a concerted effort to harass petitioner and subject him to a lawless regime of emotional and psychological abuse. Respondents have so far succeeded in accomplishing, in the secret recesses of Danbury F.C.I., what this Court forbade them from doing openly - they have deprived petitioner of "the basic elements of rudimentary due process." Id., at 14 (citation omitted)

9. Respondents' conduct in denying petitioner's furlough contravenes the Bureau of Prisons own regulations governing these inmate benefits. (See e.g. attached copy of the Federal Correctional Institution Policy Statement Inmate Furloughs) Petitioner meets the "General Qualifications for furloughs. See p. 3. Moreover, § 5(b) of the Policy Statement provide:

> Furloughs may be granted for such purposes as:
>
> (1) to respond to specific family crisis/emergencies, and/or urgent offender needs, when direct interaction appears best suited to accomplishment of correctional objectives.

The illness of petitioner's wife presents such an emergency, requiring his presence close to his family. Furthermore, in light of the Court's decision in Catalano and the order entered in the instant case, petitioner is not subject to the disqualifying exception for "persons identified with large scale criminal activity," nor was his request for furlough referred to the Regional Director for approval as provided in the exception for notoriety. The Regulations do not preclude the granting of a furlough, even in cases of notoriety. The patent irrationality of rdspondents' actions is dramatized by the unambiguous declaration in the Policy Statement that "it is important that each offender with demonstrated need and qualifications for furlough programming have opportunity for participating by reason of institutional assignment or other circumstances." See page 4.

10. Respondents are not invested with unfettered discretion in the administration of the furlough program. As this Court has ruled in a highly related context, "the [Bureau's] broad discretionary powers do have perimeters and, in the unusual circumstance when evidence is presented that it acted arbitrarily or in violation of the regulations it promulgated, a court may intervene and review the actions of the [Bureau]." Massiello v. Norton, 364 F. Supp. 1133, 1136 (D. Conn. 1973). Petitioner submits that "[i]t seems obvious on the present record that there was no reasonable basis in fact" for the denial of the furlough and that he was denied such benefit "without just cause." Massiello v. Norton, supra, 364 F. Supp. at 1136, 1137.

IV

Petitioner maintains that he has demonstrated a pattern of callous administrative indifference to a valid court order. Respondents have not sought a stay of this Court's order in this case or in Catalano. This Court's decisions are entitled to complete and faithful obedience by respondents. Respondents cannot be allowed to resort to subterfuges in the processing of inmate requests for benefits and services afforded to other inmates.

In light of these considerations, petitioner respectfully requests that this Court grant his Application for Supplemental Relief and:

(1) order his immediate release unless (a) respondents forthwith cease and desist from their unlawful conduct and immediately grant petitioner the furlough for which he is qualified; and (b) respondents assure this Court that they will treat petitioner in the same manner and respect as

all other inmates who have not been designated as "Special Offenders";

(2) order that petitioner be released upon his own recognizance pending disposition of this matter;

(3) order that this matter be considered on an expedited basis and that respondents be required to file a responsive pleading no later than December 2, 1974 and that these matters be set down for oral argument as soon as possible; and

(4) order such other relief as may be just and appropriate.

NOTICE OF APPEAL

Notice is hereby given that the United States of America hereby appeals to the United States Court of Appeals for the Second Circuit from the final judgment entered in this action on October 24, 1974.

GOVERNMENT'S RESPONSE TO ORDER TO SHOW CAUSE

Petitioner in the above-captioned case was formerly labelled "Special Case" and was, therefore, subject to the various selective procedures and treatments as found by this Court in Catalano v. Norton. The petitioner, subsequent to this Court's holding in Catalano, has applied for a furlough and has had his application denied.

The petitioner alleges that the denial of furlough was based solely upon findings from prison records by the Bureau of Prisons that the petitioner was a member of "organized crime". Petitioner claims that this finding constitutes, at least, an abuse of discretion and further that this finding, based only on prison records, without the benefit of a Catalano hearing, constitutes a contumacious rejection of this Court's Catalano decision.

The respondent denies that the petitioner's organized criminal activity was the only reason for his furlough denial. Respondent contends that there has been no abuse of discretion or violation of Catalano because the institutional records indicate ample reasons for furlough denial; reasons other than organized criminal activity.

One reason given for furlough denial was that the petitioner's "presence in the community would attract undue attention due to notoriety." This reason, similar in nature and meaning to the "deprecation of the seriousness of the offense" reason for the denial of parole is reasonable. The Bureau of Prisons obviously must be very selective in choosing prisoners for furlough since the release of well-known criminals will draw unfavorable publicity to community based rehabilitative programs which rely heavily on public trust for their successful operation.

The "notoriety" reason (see Rule 5(d)(c) of the Policy Statement on Inmate Furloughs) as applied to the petitioner has a sound basis in fact. Petitioner has a record of 34 arrests and numerous convictions. Most arrests and convictions have been related to gambling and bookmaking. Further, petitioner operated the Hideaway Lounge in Springfield, Massachusetts, a notorious center for prostitution, gambling and drug-related offenses. From this record, respondent claims that the Bureau of Prisons may reasonably find that the petitioner is a well-known criminal figure in the central Massachusetts area and that his release would attract undue public attention to both the petitioner, interfering with his rehabilitative program, and to the respondent, damaging public support for the furlough program.

There is an additional reason, Petitioner has two years left to serve (his mandatory release date is January 8, 1977). His only reason for furlough was to strengthen his family ties. Although this reason may be sufficient in other cases, the Bureau of Prisons felt that with two years left to serve this was an insufficient showing of need, in the case of the petitioner, to justify a furlough. Without some showing of a specific emergency, as described by the Policy Statement, §5(b)(1) on inmate furloughs, furloughs which appear simply to be sought to facilitate release transition will not ordinarily be granted with two years left to be served.

For the foregoing reasons, the petition should be dismissed for failure to state a claim upon which relief may be granted.

ORDER TO SHOW CAUSE WHY RELIEF SHOULD NOT BE GRANTED

Upon the application of petitioner, Paul J. Cardaropoli filed November 22, 1974, for supplemental relief, it is

ORDERED, that the respondent herein show cause on or before December 30, 1974 why supplemental relief should not be granted as prayed for in said application by filing a return responding to the allegations contained in said application; and it is further

ORDERED, that the petitioner be retained in custody within this district until further order of this Court or until petitioner is granted a furlough, released on parole or transferred to a Halfway House; and it is further

ORDERED, that service by the United States Marshal of the Order to Show Cause, together with a copy of the verified petition, on the respondent John J. Norton, Warden, on or before December 26, 1974, be deemed sufficient service.

Dated at New Haven, Connecticut, this 24th day of December, 1974.

Robert C. Zampano
United States District Judge

PETITIONER'S REPLY TO GOVERNMENT'S RESPONSE
TO AN ORDER TO SHOW CAUSE

Petitioner submits this reply to a government response to an order to show cause why supplemental relief should not be granted.

Petitioner submits that respondents and their agents and emplo have openly defied this Court's Memorandum of Decision and Judgment in this case and have violated the Due Process Clause of the United States Constitution by refusing to grant him a furlough solely on the ground that it "would attract undue attention or create unusual concern in the community."

Respondents assertions to the contrary notwithstanding, their reliance on notoriety is not supported in law or in fact, and constitutes an inexcusable and irrational abuse of administrative discretion.

I

DENIAL OF FURLOUGH ON THE GROUND THAT "THE NATURE OF THE OFFENSE AND INVOLVEMENT WOULD ATTRACT UNDUE ATTENTION OR CREATE UNUSUAL CONCERN IN THE COMMUNITY" IS A TRANSPARENT ATTEMPT TO CIRCUMVENT THE DUE PROCESS PROTECTIONS MANDATED BY CATALANO v. UNITED STATES, AND VIOLATES THE ORDERS OF THIS COURT.

In Catalano v. United States, [383 F. Supp. 346 (D. Conn. 1974)], the Court expressed its concern that the denial of furloughs by the Bureau of Prisons on the basis of an inmate's purported involvement with organized crime may result in the arbitrary and discriminatory denial

of a significant inmate benefit when such determination is unaccompanied by the most rudimentary elements of due process necessary "... to insure that the organized crime concept will be employed in a rational and non-discriminatory manner." Catalano v. United States, supra at 8. The Court explicitly rejected the Government's contention that the conferral of inmate benefits such as furloughs is within the "exclusive discretion of the Bureau of Prisons, beyond the reach of the protections of the Due Process Clause." Id. at 10.

"Social furloughs, work releases, transfers to Community Treatment Centers, and the opportunity for early parole are cognizable benefits extended to all prisoners at the F.C.I. These amenities are eagerly solicited and obviously play a meaningful role in enhancing rehabilitation, reducing frustration, maintaining morale, and minimizing unrest in the prison setting." .... "Thus the inmate has a large stake in being eligible for these rehabilitative programs .... It seems clear to the Court .... that the treatment inherent in the 'Special Offender' process constitutes 'grievous loss.' Morrissey v. Brewer, [408 U.S. 471 (1972)]; Goldberg v. Kelly, 397 U.S. 254 (1969); Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 123 (1951)(Frankfurter, J. concurring)." Id., at 11,12,13.

Subsequent decisions by this Court in Castaldi v. Norton, Civ. No. B-74-287 (Dec. 31, 1974) and Goldman v. Norton, Civ. No. B-74-384 (Dec. 31, 1974) have emphasized that the obligations imposed on the Bureau by Catalano extend beyond the facile and purely mechanical expungement of arbitrary labels. It is not sufficient for respondents to go through transparent motions of physically removing the "Special Offender" stamp from petitioner's files and records. Catalano requires that the respondents

remove all vestiges of the classification process declared unlawful by this Court. Thus, in Castaldi and Goldman, the Court found that the Bureau's reliance on allegations of sophisticated criminality constituted clear violations of the Catalano opinion, both in the letter of that decision and its spirit.[1/] Petitioner submits that denial of furlough in this instance on the basis of notoriety is nothing more than a reconstitution of the government argument advanced and rejected in Castaldi and Goldman, and constitutes a further attempt to circumvent Catalano by disingenuous reliance on §5C(2)(c) of Bureau of Prisons Operations Memorandum 7300.12C (7-23-74) and §5(d)(c) of the FCI Danbury Policy Statement.[2/]

The Government contends that the notoriety reason as applied to the petitioner has "a sound basis in fact." The Government alleges that: ."Petitioner has a record of 34 arrests and numerous convictions ... Further petitioner operated the Hideaway Lounge in Springfield, Massachusetts, a notorious center for prostitution, gambling and drug-related offenses ... and that his release would attract undue public attention to both the petitioner, ... and the respondent ..." Petitioner denies categorically that he has a record of 34 arrests. See Exhibit A. He denies that he ever has been either the owner or the operator of the Hideaway Lounge in Springfield, Massachusetts. He further denies respondent's characterization of said Hideaway Lounge. Exhibit C indicates that petitioner was nothing more than the clerk of 307 Dwight Street Corporation, doing business as the Hideaway Lounge. The manager, and not the clerk, is the only person responsible for the business. These considerations alone are sufficient to

1/ Page 1, transcript of afternoon session, Dec. 23, 1974 in B-74-387.

2/ §5(d)(c) provides: Furloughs for persons whose presence in the community would attract undue public attention or create undue public concern must be referred to the Regional Director for approval.

remove all vestiges of the classification process declared unlawful by this Court. Thus, in Castaldi and Goldman, the Court found that the Bureau's reliance on allegations of sophisticated criminality constituted clear violations of the Catalano opinion, both in the letter of that decision and its spirit.[1/] Petitioner submits that denial of furlough in this instance on the basis of notoriety is nothing more than a reconstitution of the government argument advanced and rejected in Castaldi and Goldman, and constitutes a further attempt to circumvent Catalano by disingenuous reliance on §5C(2)(c) of Bureau of Prisons Operations Memorandum 7300.12C (7-23-74) and §5(d)(c) of the FCI Danbury Policy Statement.[2/]

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1/ Page 1, transcript of afternoon session, Dec. 23, 1974 in B-74-387.

2/ §5(d)(c) provides: Furloughs for persons whose presence in the community would attract undue public attention or create undue public concern must be referred to the Regional Director for approval.

raise serious doubts about the accuracy of respondent's charges. Administra reliance on such allegations is arbitrary and capricious, where petitioner has been afforded no opportunity to contravert respondent's claims. Petitio submits that "[i]t seems obvious on the present record that there was no reasonable basis in fact" for the denial of the furlough and that he was denied such benefit "without just cause." Massiello v. Norton, 364 F. Supp. 1133, 1136 (D. Conn. 1973). In fact, the only plausible basis for responden reliance on §5(d)(c) is petitioner's alleged association with organized crime. Clearly, the offenses for which petitioner was convicted, distributi of and conspiracy to distribute cocaine, are not inherently "notorious." Furloughs are routinely granted to many inmates convicted of the same offense At no time was there broad publicity of petitioner's trial and conviction. In fact, there was no mention of his conviction in the local newspaper until June 1973, nearly one month after he had been sentenced.

In view of these considerations, it is apparent that respondent's reliance on §5(d)(c) can be attributed not to fear of notoriety, but only to petitioner's purported involvement with organized crime. To legitimate such conduct by the Bureau would be to render meaningless the clear intent of this Court in Catalano. Every inmate suspected of association with organized crime could be denied a furlough on the ground that he would "attract undue attention or create unusual concern in the community." Association with organized crime is thus equated with notoriety by the Bureau. The two are inextricably linked, and the information relied on by respondents now in citing §5(d)(c) is the same as that upon which reliance was held illegitimate in Catalano. In Castaldi and Goldman,

the Court made clear that Catalano speaks to the "profound change in an inmate's status in prison" that stems from attaching some pejorative label to him - be it "Organized Criminal" or "Notorious Criminal". Catalano protects people, not labels For the foregoing it is imperative that an oral hearing at least be conducted to determine whether any other rational basis in fact supports the respondents contention that denial of a furlough is legitimate because petitioner's presence in the community would attract undue attention due to the notoriety.

Petitioner further maintains, that even if some rational basis in fact plausibly supported the respondent's reliance on §5(d)(c), that such reliance is itself arbitrary, capricious and contrary to the court's intent in Catalano to protect inmates from discriminatory treatment at the hands of prison officials by requiring certain procedural prerequisites for determining the appropriateness of that treatment. First, there is no rational basis in law to support the denial of furloughs on the grounds that the inmate "would attract undue attention or create unusual concern in the community." Furloughs were authorized by the Congress of the United States in an amendment to Public Law 93-209, which is 18 U.S.C. §4082(c).[3/] The legislative history is precise:

> This new community-oriented approach to institutional corrections is designed to reduce recidivism by achieving two important goals: the maintenance and reinforcement of the offender's family and community ties during the period of his incarceration and the development of graduated release procedures which help ease the transition from confinement to life in the community.

Page 2. Report No. 93-218 Senate Committee on the Judiciary,(10/3/73).

3/ 18§4082(c) provides: The Attorney General may extend the limits of the place of confinement of a prisoner as to whom there is reasonable cause to believe he will honor his trust, by authorizing him, under prescribed conditions, to - (1) visit a specifically designated place or places for a period not to exceed thirty days and to return to the same or another institution or facility.

Section 4 (a) of Bureau of Prisons Policy Statement 7300.12C (7/23/74) on inmate furloughs explicitly adopts this approach. The amendment was intended to effectuate a broader-based furlough program, which could be utilized by non-dangerous inmates. It was motivated, in part, by the view, articulated by the Director of the Bureau of Prisons that "... constructive family relationships can play [an important role] in the overall favorable adjustment of offenders. There are times when periodic home visits can be justified for reasons other than emergencies. The opportunity to participate in special religious holidays and many other important family functions that mean so much to all of us can be a critical step in changing attitudes and developing positive behavior." Congressional Record H7974 (9/17/73). Because of the vast potential value of such a program, it was Congress's intent to exclude only those inmates considered dangerous or escape risks: "Only those individuals who are not dangerous, who are likely to live up to the trust placed in them, and who need the kinds of help community resources can provide, will be allowed to participate in community release." (p. 5 Senate Report). Petitioner is not a dangerous criminal. He is 53 years old with an ailing wife and two children for whom he cares greatly. (See Exhibit D) He has never been convicted of a crime of violence, nor has he ever escaped from custody. Nothing in the legislative history of the amendment contemplates the denial of furloughs to such an inmate. Clearly, § 5(d)(c) constitutes an illegitimate and unwarranted administrative abuse of the legislative mandate of Public Law 93-209. It is true that Congress did not intend to relieve the Bureau of

discretion in its administration of the furlough program. However, the Bureau is not invested with unfettered discretion in the administration of the program. As this court ruled in a case involving the Parole Board: "... the [Board's] broad discretionary powers do have perimeters and, in the unusual circumstance when evidence is presented that it acted arbitrarily or in violation of the regulations it promulgated, a court may intervene and review the actions of the [Board]." Massiello v. Norton, 364 F. Supp. 1133, 1136 (D. Conn. 1973). Also, In Johnson v. Chairman of New York State Board of Parole, F.2d (2d June 1974) the Court held with respect to the discretion of parole boards in their deliberations: "Without interfering with the Board's ability to exercise its discretion in future cases, it is our duty to determine whether the criteria used by the Board are consistent with the legislative purpose as expressed in the statute ... and whether they are followed in practice." (15 Cr. L. 2300) Similarly, the Bureau has an obligation to administer its furlough program in conformity with the legislative mandate. Petitioner submits that § 5(d)(c), as applied in the instant case, is wholly inconsistent with statutory directives.

It is well-settled now that an inmate may not sustain the grievous loss of a valuable liberty without a modicum of due process protection. In Wolff v. McDonnell, 94 S.Ct. 2963, 2974-76 (June 26, 1974) the Supreme Court asserted: "The [government] having created the right [there to good time and here to furloughs] and itself recognizing [in its regulations that "furloughs represent a program through which the offender's alienation from family and community may be minimized"], the prisoner's interest has real substance and is sufficiently embraced within [the concept of] 'liberty'

to entitled him to those minimum procedures appropriate under the circumstances and required by the Due Process Clause to ensure that the government-created right is not arbitrarily abrogated .... The touchstone of due process is protection of the individual against arbitrary action of the government."

A fundamental element of due process is the formulation and publication of rules and criteria that would provide more precise guidelines for responsible exercise of discretion. As the court noted in Johnson v. Chairman of New York State Board of Parole, supra: "The broad powers rested by statute in the Board do not relieve it from the duty of observing meaningful criteria for determining in each case when a prisoner's release "is not incompatible with the welfare of society" (15 Cr. L. 2301). Certainly, refusals to grant furloughs on grounds of dangerousness, or risk constitute meaningful criteria in view of the legislative history of the statute. § 5(d)(c), however, is so vague and overly broad as to defy any attempts to safeguard inmates against purely arbitrary action. Practically speaking, the release of any inmate on furlough could attract undue attention or create unusual concern in the community. What apparently started out as a measure to afford benefits to nondangerous, low-risk offenders has become a statute of severely-limited application due to the purely arbitrary policy of the Bureau. § 5(d)(c) does not provide any legally fixed standard at all. [See United States v. Duardim, 16 Crim. L. Rep. 2185 (Dec. 4, 1974) (USDC, W.D. Mo., Oliver, J.) where the dangerous special offender language of 18 U.S.C. §3574 was held unconstitutionally vague and uncertain.] As § 5C(2)(c) does not provide any principles which would promote consistency

by the Bureau, nor does it provide any basis for critical appraisal, petitioner contends that it is illegitimate on its face.

In addition, reliance on § 5(d)(c), rather than the other exceptions outlined in § 5(d), involves the unwarranted conclusive presumption that an inmate would, in fact, attract undue attention or create unusual concern on the basis of involvement with organized crime, or, as in this case, because of "the nature of the offense and involvement." See Exhibit B . Clearly, the factual hypothesis of such an assumption - that the nature of the offense would attract undue attention or create unusual concern - is neither necessarily nor universally true, and the denial of furloughs essentially because of the nature of the offense constitutes a serious burden on the petitioner's exercise of a significant liberty, and hence a violation of his due process rights. Statutes creating permanent irrebutable presumptions have long been disfavored under the Due Process Clause of the 5th and 14th Amendments. Vlandis v. Kline, 93 S.Ct. 2230 (1973); Cleveland Board of Education v. LaFleur, 94 S.Ct. 791 (1974). The same considerations obtain here where the Bureau's factual hypothesis is by no means necessarily true, and where it bears little relation to the state interests at stake. The Government contends that release on furlough can be denied petitioner if his release would attract undue public attention because it would damage public support for the furlough program and interfere with petitioner's rehabilitative progress. The Supreme Court has reaffirmed, however, "... administrative convenience alone is insufficient to make valid what otherwise is a violation of due process of law." Cleveland Board of Education v. LaFleur, supra at 799. Similarly assessments of adverse public

reaction to the furlough program cannot be used to justify inequitable discriminatory distributions of inmate benefits. Respondents assertions to the contrary notwithstanding, denial of furlough privileges to petitioner has seriously interfered with his rehabilitative program, generating bitterness and undermining his resolve to change his way of life and be rehabilitated. Furthermore, petitioner has at no time received the opportunity to contest the Bureau's determinations, and at the very least is entitled to a hearing in this regard.

Because of the large stakes involved, as in Catalano, the Bureau should not be allowed to make arbitrary and discriminatory determinations of "notoriety." There, the Court required that an inmate could not be treated as a special offender without receiving a hearing affording rudimentary due process protection. At least as much is due an inmate before he can be denied correctional benefits on the basis of notoriety. The deprivation is identical, only the label differs.

II

THE ONLY MEANINGFUL SANCTION AT THIS TIME FOR RESPONDENTS' CONTUMACIOUS CONDUCT IS PETITIONER'S IMMEDIATE RELEASE FROM CONFINEMENT UNLESS RESPONDENTS CEASE AND RESIST FROM THEIR UNLAWFUL CONDUCT AND: IMMEDIATELY GRANT PETITIONER THE FURLOUGH FOR WHICH HE IS QUALIFIED.

Respondents' have not complied with the orders of this Court. Respondents cannot be allowed to resort to subterfuges in the processing of inmate requests for benefits and services. As in Castaldi and Goldman, petitioner is entitled to compensatory relief for the invasion of his federally-secured rights. As the Supreme Court stated in Bell v. Hood, 327 U.S. 678, 684 (1946): "Where federally protected rights have been invaded, it has been the rule from the beginning that courts will be alert to adjust their remedies so as to grant the necessary relief. ... It is also well-settled that where legal rights have been invaded, and a federal statute provides for a general right to sue for such invasion, federal courts may use any available remedy to make good the wrong done."

Petitioner's immediate release is not an extreme measure. At stake here is the petitioner's interest in his liberty and the sanctity of the judicial process. This Court's order was not to be "disobeyed and treated as though it were a letter to a newspaper." United States v. United Mine Workers, supra, 330 U.S. at 310 (Frankfurter, J. concurring). This Court does not sit to issue advisory opinions which the Bureau of Prisons may choose to disregard. The order was not obeyed, and respondents' intransigence calls for an appropriate judicial response.

If the Court is of the view that some form of alternative relief is appropriate, petitioner should be released pending respondent's

implementation of that relief. Petitioner has already suffered irreparable harm as a result of continued disobedience by respondents of this Court's order. In view of the extreme hardships endured by petitioner and his loss of over 12 days of furloughs, interim release is more than appropriate.

WHEREFORE, petitioner prays that this Court grant his application for Supplemental Relief and:

1. order his immediate release unless (a) respondents forthwith cease and desist from their unlawful conduct and immediately grant petitioner the fu-lough for which he is qualified; and (b) respondents assure this Court that they will treat petitioner in the same manner and respect as all other inmates who have not been designated as "Special Offenders";

2. order that petitioner be released upon his own recognizance pending disposition of this matter; and

3. order such other relief as may be just and appropriate.

EXHIBIT A

UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION
WASHINGTON 25, D. C.

This FBI identification record is furnished to Mr. Paul Cardoropoli pursuant to Departmental Order 556-73. 3 171 700

IDENTIFICATION DIVISION

The following FBI record, NUMBER , is furnished FOR OFFICIAL USE ONLY.

CONTRIBUTOR OF FINGERPRINTS	NAME AND NUMBER	ARRESTED OR RECEIVED	CHARGE	DISPOSITION
P.D., Springfield, Mass.	Paul M. Cardaropoli #6289	8-6-39	A&B	
USN, Army	Paul Joseph Cardaropoli #22-XXS	assembler 11-13-42	NON-ARREST ENTRY	
CIC, Army	Paul Joseph Cardaropoli #101-SAV	inspector 12-1-42	NON ARREST ENTRY	
St. Pol., Northampton, Mass.	Paul J. Cardaropoli #--	9-4-46	gaming	
State B. of I. Dept. of Public Safety, Boston, Mass. #--	Paul J. Cardaropoli #--SPol. Northampton, Mass.	9-4-46	not given	
SPol., Northampton, Mass.	Paul Cardaropoli #--	9-4-47	lottery-bookmaker	
Jail and H of C Springfield, Mass	Paul Cardaropoli #84843	1-14-49	larc	18 mos
PD Chicopee Mass	Paul Nick Cardaropoli #775	9-20-50	utt forged checks	
St Bu Boston Mass	Paul J. Cardaropoli #--	11-20-60	being present at gaming	
Sheriff Jail & H of C Springfield Mass	Paul Cardaropoli #96382	2-2-61	vio Gaming Laws	2-2-61 4 mos
PD Holyoke Mass	Paul Joseph Cardaropoli #3785	9-28-61	using a Telephone to register bets	1 $1500 $150 on chg of [illegible] bets 30 days [illegible] chg of unlawful use [illegible]

Notations indicated by * ARE NOT BASED ON FINGERPRINTS IN FBI files. The notations are based on [illegible] formerly furnished this Bureau concerning individuals of the same or similar names or aliases and ARE LISTED ONLY AS INVESTIGATIVE LEADS.

MASTER
I-4 (Rev. 5-20-71)

MASTER

MASTER

UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION
WASHINGTON, D.C. 20537

2 3 471 700

The following FBI record, NUMBER , is furnished FOR OFFICIAL USE ONLY. Information shown on this Identification Record represents data furnished FBI by fingerprint contributors. WHERE DISPOSITION IS NOT SHOWN OR FURTHER EXPLANATION OF CHARGE OR DISPOSITION IS DESIRED, COMMUNICATE WITH AGENCY CONTRIBUTING THOSE FINGERPRINTS.

CONTRIBUTOR OF FINGERPRINTS	NAME AND NUMBER	ARRESTED OR RECEIVED	CHARGE	DISPOSITION
Sheriff Jail & H of C Springfield Mass	Paul Cardaropoli 97405	3-20-62	vio Gaming Laws	6 mos & 6 mos conc
Sheriff Jail & H of C Springfield Mass	Paul Cardaropoli 98300	2-21-63	fraudulent use of phone	30 das
Bu of Nar & Dang Drugs Wash DC	Paul Joseph Cardaropoli D2-72-0020	9-8-72	21USC841 (a) (8) unlawful distribution of controlled substances	
USM Boston MA	Paul Joseph Cardaropoli 6176	12-20-72	consp viol Narcotic Law	5-0-0;5-0-0 prob on or after; 3-0-0 spec. parole
FCI Danbury Conn	Paul J. Cardoropoli 25251-145	6-8-73	21-841 distr. narc S-I	5 yrs imposed on 5-14-73 Dist-Mass by Illegible

EXHIBIT B

BUREAU OF PRISONS
ADMINISTRATIVE REMEDY

INSTRUCTIONS:
TYPE OR USE BALL POINT PEN. IF MORE SPACE IS NEEDED, USE ATTACHMENT SHEET IN TRIPLICATE.

*To: * Warden of Institution
Director, Bureau of Prisons

X

From: CARDARGPOLI, Paul (LAST NAME, FIRST, MIDDLE INITIAL) 25251-145 (C) (REG. NO.) F.C.I. DANBURY (INSTITUTION)

Part A—INMATE REQUEST

I HAVE LEARNED THAT I HAVE BEEN DENIED A FURLOUGH BY THE ADVISARY COMMITTEE. I WAS APPROVED BY MY TEAM (C) . JUDGE ZAMPANA HAS ORDERED THAT MY "SPECIAL OFFENDER" DESIGNATION BE REMOVED. THERE IS NO REASON IN DENYING MY REQUEST. I HAVE AN EXCELLENT INSTITUTIONAL RECORD AND A COMPELLING NEED FOR THE REQUESTED BENEFIT. BECAUSE OF THE EMERGENCY NATURE OF THIS MATTER, I RESPECTFULLY REQUEST AN ANSWER.

11-13-74 (DATE)

Paul J. Cardargpoli (SIGNATURE OF REQUESTOR)

Part B—RESPONSE

The Advisory Committee reviewed your furlough request on November 15, 1974 and it was denied. The committee felt that the nature of the offense and involvement would attract undue attention or create unusual concern in the community.

A furlough is a privilege and not a right. It may not be granted automatically because an applicant is technically eligible nor automatically as a reward for good behavior.

Dec. 3, 1974 (DATE)

J. Murrils Chief C&P

D. Sledge (SIGNATURE OF REPRESENTATIVE OF DIRECTOR OR WARDEN)
Actng. Associate Warden

ORIGINAL: TO BE RETURNED TO THE OFFENDER AFTER COMPLETION.

Part C—RECEIPT

Return to: (LAST NAME, FIRST, MIDDLE INITIAL) (REG. NO.) (INSTITUTION)

I acknowledge receipt this date of a complaint from the above inmate in regard to the following subject:

(DATE) (RECIPIENT'S SIGNATURE (STAFF MEMBER))

FPI-NI—8-10-73 SN 5610-815

EXHIBIT C

April 1, 1974

To whom it may concern:

This is to certify that the following are the stock ownership in the 307 Dwight St. Corp. d/b/a/ The Hideaway Lounge, ,

Judith Bouchard	50 shares	President	27 Griffin St.,Spfld.
Edgar Bouchard	49 shares	Treasurer	27 Griffin St.,Spfld.
Pat Cardaropoli	1 share	Clerk	15 Hazel St., W. Spfld.

Patsy Cardaropoli

Patsy Cardaropoli

Leo V. Bennett Notary Public

my commission expires 12/21/74

EXHIBIT D

COLLEGE OF OUR LADY OF THE ELMS
CHICOPEE, MASSACHUSETTS 01013

OFFICE OF THE PRESIDENT

November 27, 1974

Mr. Samuel Fein, Case Worker
Danbury F.C.I.
Pembroke Station
Danbury, Connecticut 06810

Dear Mr. Fein:

Although I know that Mr. Paul Cardaropoli is confined at Danbury because of the judgment of the court I have written to Mr. J. J. Norton, Warden, because I know that a Christmas furlough would mean a great deal to Mr. Cardaropoli's step-daughter, Debra Cianchini, who is a student here at the College of Our Lady of the Elms.

I do not know Mr. Cardaropoli well enough to support his request for a Christmas furlough on his merits. However I know that he has been a thoughtful and loving father to Debra and that he has provided a good home for her and her mother. Because their Christmas would be a great deal brighter if he is home for Christmas I would be happy to answer any requests for additional information which you might need.

Sincerely yours,

Thomas F. Devine

(Rev. Monsignor) Thomas F. Devine

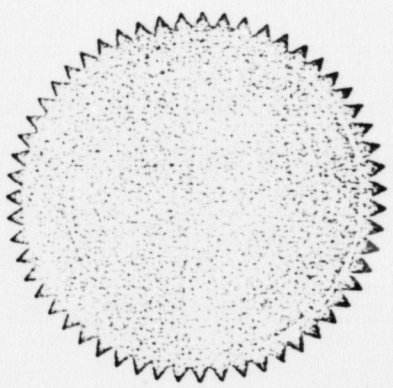
CLERK'S CERTIFICATE

I, Sylvester A. Markowski, Clerk of the United States District Court for the District of Connecticut, do hereby certify that the foregoing copies of the Docket Entries lettered A through D, inclusive, and the original documents numbered 1 through 22, inclusive, constitute the Record on Appeal in the above-entitled case.

I further certify that transmission of the Record has been effected under date of January 24, 1975, pursuant to Rule 11(b) of the Rules of Appellate Procedure.

Dated at Bridgeport, Connecticut, this 24th day of January, 1975.

SYLVESTER A. MARKOWSKI, Clerk



By Vincent R. DeRosa
Vincent R. DeRosa
Deputy in Charge

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

PASQUALE CATALANO, MARIANO INGOGLIA and DONALD FONTANA	:	
v.	:	CIVIL NO. B-883
UNITED STATES OF AMERICA and JOHN J. NORTON, Warden, Federal Correctional Institution, Danbury, Connecticut	:	

MEMORANDUM OF DECISION

This habeas corpus case, together with a series of similar applications for relief presently pending in this District,[1/] raises the issue whether the Due Process Clause of the Fourteenth Amendment requires that procedural rights be extended to federal prisoners prior to their classification as "Special Offenders" or "Special Cases." The petitioners were represented by court appointed counsel,[2/] hearings were held at which eight witnesses testified,[3/] and comprehensive briefs were filed by the parties.

1/ D'Ercole v. Norton, Civil No. B-74-294 (D.Conn. 1974); Castaldi v. Norton, Civil No. B-74-287 (D.Conn. 1974); Agone v. Norton, Civil No. B-74-229 (D.Conn. 1974); Maida v. Norton, Civil No. B-74-209 (D.Conn. 1974); Mosca v. Norton, Civil No. B-74-194 (D.Conn. 1974); Cardaropoli v. Norton, Civil No. B-74-86 (D.Conn. 1974).

2/ Attorneys Dennis Curtis and Stephen Wizner, and Law Student Intern Robert Davis, all members of the Yale Legal Services Organization, served as counsel with extraordinary competence, diligence and dedication, for which the Court is most appreciative.

3/ On April 30, May 1 and May 23, 1974, the Court heard the testimony of the three petitioners; the petitioners' caseworkers, Paul Smithers and Paul Lefebvre; the Chief of Classification and Parole at the F.C.I., Jerome Edwards; the former Chief of Population Control for the Bureau of Prisons, Lawrence Butler; and the Chief Hearing Examiner of the United States Board of Parole, Bernard Wrenn.

I

The petitioners, Pasquale Catalano, Mariano Ingogli and Donald Fontana, were, at the time this suit was instituted, inmates at the Federal Correctional Institution in Danbury, Connecticut (hereinafter "F.C.I."). They contend that they have suffered serious deprivations and grievous losses as a result of their designations as "Special Offenders" and "Special Cases" by the Bureau of Prisons. Specifically, they claim that they have been denied social furloughs, release on parole, and transfers to Community Treatment Centers. In addition, they assert they have been subjected to administrative procedures and delays not applicable to other prisoners, and that they have been stigmatized as members of organized crime without factual justification.

Petitioner Catalano was committed to the F.C.I. in the fall of 1972 after his conviction for the interstate transportation of stolen goods. Several months later, he was notified he had been classified as a "Special Offender" because of certain information in his presentence report which reflected a "probable link with organized crime activities." Apparently this conclusion was based on Catalano's "acquaintance with the Gallo brothers" who were reputed to be key members of an organized crime syndicate in Brooklyn. According to Catalano, he was informed by his caseworker that his status as a "Special Offender" would adversely affect his chances for a social furlough, for transfer to a halfway house and, eventually, for parole.

On February 27, 1974, the staff at the F.C.I. approved Catalano's application for a two-day furlough to visit with his young son. Ordinarily, staff approval would permit an inmate to leave the prison pursuant to his request. However, since Catalano was a "Special Offender", the staff's decision had to be referred to the Bureau of Prisons in Washington for ratification. The Bureau withheld its ruling for over five weeks until finally in April, 1974 the application was denied. In addition, despite the staff's favorable recommendation, Catalano was denied a parole.

Petitioner Ingoglia, a co-defendant of Catalano's, entered the F.C.I. in 1973 to serve a sentence of two and one-half years. He was designated a "Special Offender" in February, 1974 "due primarily to the organized nature of the offense, the sophistication that it involved, and the possibility of its connection with organized crime."

When Ingoglia applied for a transfer to a Community Treatment Center, the institution staff approved. Were it not for the "Special Offender" label on his file, Ingoglia would have been immediately sent to a halfway house. However, because of the designation, Ingoglia's request was referred to the Bureau of Prisons which denied permission for the transfer. Moreover, five applications for social furloughs, all approved on the institutional level, had not been acted upon by the Bureau at the time of the hearings before this Court.

Petitioner Fontana was assigned to the F.C.I. in 19 to serve a two and one-half year sentence for possession o stolen goods. Five months later he was informed he had be classified as a "Special Offender" because of certain info mation linking him with organized crime. When Fontana applied for a transfer to a halfway house, the request was denied with the notation "special offender, ineligible for transfer." After this case was commenced, the Bureau of Prisons reconsidered Fontana's status and ordered that the "Special Offender" marking be removed from his records. I compliance, prison officials merely pencilled a few lines across the classification stamped on his folder; the desig nation is still clearly visible on the files.

None of the three petitioners received prior notice of his "Special Offender" classification; none was afforde an opportunity to be heard, to present evidence, or to hav counsel or counsel-substitute in order to contest the authorities' actions; none was provided with a written decision setting forth the factual basis for the classifi- cation.

II

The terms "Special Offender" and "Special Case" we used interchangeably by the witnesses at trial. Casework Smithers stated that the notation was written on a prison file if he "needed to be followed from institution to ins tion;" caseworker Lefebvre testified that the label indic

the inmate was "associated with organized crime activities; and Mr. Edwards, Chief of Classification and Parole at the F.C.I., maintained that the characterization was placed on the records if there was any reason a prisoner "could not b transferred without Bureau of Prisons approval." While the testimony was not consistent on the point, it appears that "Special Offender" designation is used to control the trans fer and release of any inmate who is a state prisoner, a member of organized crime, a custody risk, a "notorious" person, or a "threat" to a high government official.

In an effort to codify the various practices concern ing the use of the "Special Offender" stamp, the Bureau of Prisons, during the pendency of this action, promulgated a series of standards to identify and tabulate information "on certain special categories of offenders who require greater case management supervision than the usual case." Bureau of Prisons Policy Statement 7900.47 (April 30, 1974) These new guidelines set forth eight categories for the "Special Offender" designation: non-federal prisoners, members of organized crime, protection cases, custody risks subversives, notorious individuals, persons who pose a danger to high government officials, and any offender who requires "close supervision."

Prior to the issuance of these criteria, there were no written rules, regulations, instructions, or policy statements to aid the decision-maker faced with a potentia "Special Case." No formalized procedures were followed pr

to the application of the "Special Offender" notation on a prisoner's records. Instead, decisions were based on vague, indefinite and varying sets of guidelines. Usually the case worker initiated the classification after a review of the contents of the inmate's file. If in doubt the caseworker might refer the question to a superior or, as one caseworker testified, simply rely on the "folklore" of prison practice. When a caseworker decided that a prisoner should be placed in a "Special Offender" status, he forwarded the suggestion to the Chief of Classification and Parole who, after independent review, either rejected or accepted the recommendation. All affirmative rulings were then referred to the Bureau of Prisons for final approval.

Under the recently enacted regulations, the warden of each prison will assign a staff member to coordinate the Special Offender Program. The institution staff will make the initial determination based on "court records, informat from the Central Office, or other reliable sources." An affirmative recommendation will be reviewed by the Central Office of the Bureau of Prisons and, if confirmed, the inmate will not be transferred or be allowed to participat in community programs without prior approval of the Centra Office. A stamped notation of these restrictions is to be recorded on the prisoner's file at the institution.

III

Neither the procedures in effect at the time of trial nor the new standards grant a prisoner formal notice that he is a candidate for a "Special Offender" classification. Moreover, he is not informed that the label has been recommended or approved. Testimony revealed that in most cases the inmate first learns of his status when he requests a transfer or a furlough and is told his application must be approved at the Bureau of Prisons' level; in some cases, the prisoner becomes aware of his classification by "looking over the caseworker's shoulder" and observing the markings on his file. Although upon inquiry an inmate is advised of the general reason for the designation, i.e., "organized crime", "security risk", etc., he is not apprised of the underlying evidence and is offered no opportunity to be heard or to contest the classification. His administrative remedies are, of course, preserved. Bureau of Prisons Policy Statement 2001.6 (February 14, 1974); cf. Kochie v. Norton, 343 F.Supp. 956 (D.Conn.1972), but at best these provide merely a review "on the records."

As one might expect, the most troublesome category included in the "Special Offender" class is "organized crime." This phrase, as so vividly illustrated in the testimony of the witnesses, is subject to myriad interpretations and applications. Apparently prison officials persist in applying the designation to "any person who engages in a criminal activity involving some systematic planning and joint venture with another or others," a definition

expressly rejected by this Court in Masiello v. Norton, 364 F.Supp. 1133, 1135 (D.Conn. 1973). It appears that, to date, there has been no attempt by the Bureau of Prisons to avoid continued misconstruction and misapplication of the label by promulgating a workable set of guidelines for decision-making to insure that the "organized crime" concep will be employed in a rational and non-discriminatory manne The present inconsistency in attributing an "organized crim designation to an inmate is exemplified by the fact that each of the petitioners in the instant case was characteriz as a member of organized crime by the Bureau of Prisons; yet, after investigation, the Board of Parole found no basi for the classifications when the petitioners were being con sidered for parole release. Therefore, it seems appropriat at this point to call the government's attention again to t formula advanced in Masiello, which the Court perceives no valid reason to alter:

> A prisoner may be classified as a member of organized crime if the officials of the . . . Board have a reasonable basis in fact to conclude that the inmate was a prominent figure in a structured criminal syndicate composed of professional criminals who primarily rely on unlawful activity as a way of life. 364 F.Supp. at 1135.

IV

The consequences of a "Special Offender" classifica tion are significant. In most cases, the designation dela or precludes social furloughs, release to halfway houses a

transfers to other correctional institutions; in some cases, the characterization may bar early parole.

Ordinarily, a request for a temporary leave or a transfer is considered and a decision rendered at the institutional level by the prisoner's caseworker and the prison's Advisory Committee. The inmate may personally propound his cause and the application is immediately processed. If approved, the grant of relief is prompt. However, unlike a regular prisoner, a "Special Offender's" request for a similar dispensation must proceed through an additional step for approval in the Bureau of Prisons. Inordinate delays are common. In addition, the inmate has no personal contact with the decision-maker and, if his request is denied, the prisoner experiences anxiety, anger, bewilderment and, at times, despondency. As previously stated, institution staff approved the applications for leave of the petitioners in the case at bar, but its decisions were overruled by the Bureau of Prisons solely on the ground that the petitioners were "Special Offenders."

With respect to parole, there are several definite consequences of a "Special Offender" classification: (1) all "Special Offender" cases are automatically reviewed en banc by the Board of Parole in Washington; (2) the Board of Parole makes an independent survey of the underlying evidence relied on by the Bureau of Prisons in designating an inmate a "Special Offender" and, if the evidence is found

wanting, the Board of Parole will not give any weight t
the classification in its deliberations on the feasibil
of parole for the prisoner; (3) however, if a prisoner'
"Special Offender" label has a supportable basis in fac
his parole release may well be affected even to the poi
of exceeding the appropriate length of time prescribed
the Table of Guidelines, 28 C.F.R. § 2.20, 39 Fed. Reg.
20031 (June 5, 1974).

Thus, it is apparent to the Court that dire cons
quences flow from a "Special Offender" classification a
that an inmate has a vital interest in the decision-mak
process.

V

The government asserts, as it did in Masiello, th
the "Special Offender" classification is merely an "inte
management tool" designed "to control the transfer and t
lesser extent the correctional programs of certain inmat
Therefore, it argues, the issues raised in the instant c
are matters solely within the exclusive discretion of th
Bureau of Prisons, beyond the reach of the protections o
Due Process Clause. The Court, as in Masiello, disagree

While it is true that historically courts will avoid unnecessary intervention in and interference with the internal administration of prisons, cf. Menechino v. Oswald, 430 F.2d 403 (2 Cir. 1970), cert. denied, 400 U.S. 1023 (1971), the broad discretionary powers vested in prison officials do have perimeters and are subject to judicial review when a prisoner suffers a substantial loss due to purely arbitrary actions of these officials. See, e.g., Wolff v. McDonnell, ____U.S. ____(June 26, 1974); Johnson v. New York State Board of Parole, ____F.2d ____(2 Cir. June 13, 1974); Gomes v. Travisono, 490 F.2d 1209 (1 Cir. 1973); Sostre v. McGinnis, 442 F.2d 178 (2 Cir.), cert. denied, 404 U.S. 1049 (1971).

Social furloughs, work release, transfers to Community Treatment Centers, and the opportunity for early parole are cognizable benefits extended to all prisoners at the F.C.I. These amenities are eagerly solicited and received by the inmates and obviously play a meaningful role in enhancing rehabilitation, reducing frustration, maintaining morale, and minimizing unrest in the prison setting.

The furlough facilitates the release transition from the institution to the community by providing the prisoner with a temporary leave to be with his family and to participate in outside educational, religious, civic and recreational activities; work release enables the inmate to master a trade and become a contributing member in society following

incarceration; and the halfway house is a recognized rehab
tation facility which permits the inmate to live in a less
restrictive environment and affords him the opportunity to
gradually reintegrate into the community by securing a pla
to live, obtaining employment, and strengthening personal
relationships while under supervision. Parole release is
fully recognized as being of "enormous interest" to the
prisoner and, in the light of the principles enunciated in
Morrissey v. Brewer, 408 U.S. 471 (1972), must be treated
"a conditional liberty" entitled to due process protection
Johnson v. New York State Board of Parole, supra.

Thus the inmate has a large stake in being eligible
for these rehabilitative programs. Yet a "Special Offende
may be disqualified from these advantages without notice a
without a hearing. The disparity in the treatment of a
"Special Offender" is apparent when one considers that a
non-"Special Offender" must be afforded minimum due proces
before he may be similarly deprived of access to prison
programs as a result of a violation of institutional rules
See, e.g., Newkirk v. Butler, 499 F.2d 1214 (2 Cir. 1974);
Gomes v. Travisono, supra; Ault v. Holmes, 369 F.Supp.288
(W.D.Ky. 1973). The "Special Offender", who has not
deviated from prescribed standards of conduct, also suffe
short and long range privations but is not told why or
given the opportunity to contest the charges against him.
It is no wonder that when a prisoner learns of his "Speci
Offender" status, which will foreclose liberties extended

other prisoners, he assumes, because he does not know the facts, that prison officials acted arbitrarily and unreasonably. In his depressed state of mind, he rationalizes that he has been a victim of unlawful practices including discrimination, corruption, hearsay statements in his presentence report, and rumor, gossip and untested information relayed to the officials by hostile "confidential" informers.

It seems clear to the Court, therefore, that the treatment inherent in the "Special Offender" process constitutes "grievous loss." Morrissey v. Brewer, supra; Goldberg v. Kelly, 397 U.S. 254 (1969); Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 123 (1951) (Frankfurter, J., concurring). It is not to be implied, however, that the Court suggests the classification be discarded. The Court accepts the government's position that the "Special Offender" designation provides an expedient and effective method to call attention to an inmate who might pose a danger to others if transferred, temporarily released or paroled. Moreover, it is obvious that the need to control the movement of prisoners within the system is an integral aspect of prison management. Organized crime figures should not be integrated with young, less sophisticated and impressionable prisoners, nor should they be placed in a facility which would enable them to conduct any aspect of their illegal businesses; custody and escape risks must be noted for special observation and security;

premature release of "notorious" persons may result in adverse publicity; inmates who are hostile to each other should be in different prisons; and the transfer of state prisoners must conform to the contractual obligations of the government.

However, while the "Special Offender" classification may facilitate prison administration, this does not excuse the lack of due process inherent in the present practices by which an inmate is accorded the special designation. Cf. Newkirk v. Butler, supra. It is the Court's view that, since there is a profound change in an inmate's status in prison due to the "Special Offender" classification, as a result of which he suffers adverse consequences, he is entitled to the basic elements of rudimentary due process. See Allen v. Nelson, 354 F.Supp. 505, 513 (N.D.Cal.), aff'd 484 F.2d 960 (9 Cir. 1973).

VI

The final remaining issue concerns the extent of the process due. The petitioners submit that the minimum requirements of procedural due process include: (1) written notice, at least ten days prior to a hearing, containing specific allegations supporting the "Special Offender" classification; (2) the opportunity to be heard in person and to present witnesses and documentary evidence; (3) the right to confront and cross-examine witnesses; (4) the assistance of counsel or counsel-substitute; (5) a

stenographic or tape recording of the hearing; (6) an impartial hearing officer; (7) a written statement by the factfinder as to the evidence relied on and the reasons for the classification; and (8) review by the warden and, if he endorses the recommendation, the right to appeal to the Bureau of Prisons. Cf. Gagnon v. Scarpelli, 411 U.S. 773 (1973); Morrissey v. Brewer, supra; Goldberg v. Kelly, supra; Collins v. Hancock, 354 F.Supp. 1253 (D.N.H. 1973). The government, on the other hand, contends that the new standards issued by the Bureau of Prisons provide adequate protections for the "Special Offender."

The Court agrees with neither the petitioners nor the government. It is now well established that the very nature of due process "negates any concept of inflexible procedures universally applicable to every imaginable situation." Cafeteria Workers v. McElroy, 367 U.S. 886, 895 (1961). Here, as in Wolff v. McDonnell, supra, there must be a balancing of the interests of the penal authorities against those of the inmate. As stated, prison officials have valid concerns which necessitate the use of the "Special Offender" classification. But, unlike most cases involving discipline for a specific act or acts, the institution's staff is not confronted with an emergency situation; there is no pressure upon the officials to act without delay to apply the 'Special Offender" designation in order to punish an inmate, to protect other prisoners, or to prevent uncontrollable

disturbances. Cf. Morris v. Travisono, 310 F.Supp. 857 (D.R.I. 1970). Moreover, the potential impact of formalized procedures upon the penal authorities' time and convenience is minimal: only 39 of the 800 inmates at the F.C.I. are "Special Offenders."

Under these circumstances, it is the Court's opinion that fundamental fairness requires that the inmate be given at least ten days notice that a "Special Offender" classification is contemplated. The notice should provide the prisoner with a specification of the reason or reasons for the designation and a brief description of the underlying evidence relied on by the prison authorities. This notice should be sufficient to enable the inmate, if he wishes, to marshall the facts in his defense and to controvert the charges at the hearing.

The inmate must be afforded a personal appearance before the decision-maker and be permitted to call witnesses and present documentary evidence. The hearing officer, of course, will have the necessary discretion "to keep the hearing within reasonable limits and to refuse to call witnesses that may create a risk of reprisal or undermine authority, as well as to limit access to other inmates to collect statements or to compile other documentary evidence." Wolff v. McDonnell, supra, at ____.

Except in the unusual situation where the decision-maker cannot rationally determine the facts, the opportunity

for confrontation and cross-examination of those furnishing evidence against the inmate is not required. The testimony disclosed that, in the overwhelming majority of the "Special Offender" cases, the source of the information against the prisoner is contained in his presentence report or in other documentary materials. The inmate should be fully informed of the nature of the evidence against him and be afforded suitable time to present his side of the case.

Counsel need not be furnished. However, if the issues are complex or the inmate appears to be unable to collect or present his evidence, he should be permitted the aid of retained counsel, counsel-substitute, or the members of the Yale Legal Services Organization at the F.C.I.

The hearing officer, who should not have personal knowledge of the information upon which the proposed "Special Offender" classification is based, may be appointed by the warden or the officials of the Bureau of Prisons. An inmate's caseworker shall be eligible to preside as the decision-maker. The proceedings need not be transcribed or recorded. Within a reasonable time after the hearing is concluded, the hearing officer must submit written findings in support of an affirmative opinion that a "Special Offender" classification is warranted under the facts of the case.

Finally, a recommendation for a "Special Offender" classification shall be subject to review by the Chief of Classification and Parole at the F.C.I., the warden, and ultimately the Bureau of Prisons.

For the above reasons, it is hereby Ordered:

1. That the respondents forthwith remove and totally expunge the "Special Offender" classifications from all records and files maintained by the Bureau of Prisons or any of its institutions with respect to petitioners Catalano, Ingoglia, and Fontana;

2. That the respondents are hereby enjoined from reclassifying any one of the petitioners as a "Special Offender" unless he is accorded procedural due process as set forth in this opinion.

Dated at New Haven, Connecticut, this 8th day of October, 1974.

Robert C. Zampano
United States District Judge

BUREAU OF PRISONS WASHINGTON, D. C. 20537

Policy Statement

7300.12C

7-23-74

SUBJECT: INMATE FURLOUGHS

1. PURPOSE To revise inmate furlough policies and procedures.

2. DIRECTIVES AFFECTED

a. Policy Statement 7500.20B, dated 11/16/71 - referenced.
b. Policy Statement 7300.12B, dated 1/7/74 - hereby cancelled.

3. REFERENCE

a. Public Law 93-209, Title 18, Section 4082(c), Paragraph 1, has been amended to read as follows:

The Attorney General may extend the limits of the place of confinem of a prisoner as to whom there is reasonable cause to believe he wi honor his trust, by authorizing him, under prescribed conditions to

* (1) visit a specifically designated place or places for a period not to exceed thirty days and return to the same or another institution or facility. An extension of limits may be grante to permit a visit to a dying relative, attendance at the funer al of a relative, the obtaining of medical services not otherwise available, the contacting of prospective employers, the establishment or reestablishment of family and community ties or for any other significant reason consistent with public interest.

4. POLICY

a. Furloughs can be an important part of the continuing effort which should be made to prepare offenders for release to the community. Furloughs may be granted by delegated authority, in accordance with the provisions of Title 18, Section 4082, amended. Thirty days is the maximum length of time authorized by the statute for furloughs.

b. A furlough is any authorized absence from the institution, for any period of time, when the inmate is not on a work/study release program and is not under escort of a member of the staff or a U. S. Marshal. Since a furlough is a privilege and not a right, it may no be granted automatically as a reward for good behavior. Furloughs shall not be used as a technique to shorten sentences.

c. Offenders granted furloughs remain in the custody of the Attorney General. Furlough time in the community is creditable toward service of the sentence. An offender on furlough who absconds shall be processed as an escapee, and an offender who fails to follow through on the conditions of a furlough will be subject to disciplinary action.

d. Each request for a furlough shall be reviewed to determine that it is bonafide, is consistent with basic furlough policies and will contribute to the attainment of correctional goals for the inmate.

e. All expenses of a furlough (transportation, food, lodging and incidentals) must be borne by the inmate, his family or other appropriate source, as approved by the Chief Executive Officer of the institution. Government funds shall not be used except in such special circumstance as transfer to another correctional facility where the Government already has an obligation to provide transportation.

5. ADMINISTRATION

a. Community Relations

(1) Correctional Managers and staff should promote public understanding of and support for the furlough program by developing and maintaining communications to impart basic information, interpret the aims of furloughs and explain their relationship to the total correctional process. Official and other important segments of the local communities shall also be advised of the continuing progress and modifications of the program.

(2) Whenever furlough is to a district in which release supervision is to occur, the U. S. Probation Officer concerned must be notified. Also, the offender should be encouraged to personally contact the U. S. Probation Officer to discuss release plans.

b. Purposes of Furlough - Furloughs may be granted for such purposes as:

(1) To respond to specific family crisis/emergencies, and/or urgent offender needs, when direct personal interaction appears best suited to the accomplishment of correctional objectives.

* (2) To obtain necessary medical-dental treatment which is not otherwise available and is recommended by the Chief Medical Officer/Chief of Health Programs and the Warden. This requires Central Office approval (see 5c(2)(d)) and full documentation.

(3) To participate in completion of release plans, including interviews with prospective employers, school enrollment and obtaining suitable housing.

(4) To participate in special courses of training of 30 calendar days or less when daily commuting from the institution is not feasible.

* (5) To participate in family and selected community educational, social, civic, religious and recreational activities or to establish or reestablish family or community ties when it is determined that such activities will directly facilitate the release transition from institution to the community.

(6) For transfer to another correctional facility, such as a Community Treatment Center or a minimum security camp.

* (7) To comply with the legal process of a court of competent jurisdiction, whether state or federal; to appear before a grand jury; to comply with the legal process or official request of a state or federal legislative body; to comply with the legal process or official request of a duly constituted regulatory or licensing agency.

When the court proceeding is criminal in nature, (involving an appearance for final sentencing, testifying, or grand jury appearance), a furlough will be used only when requested or recommended by the Court or prosecuting attorney involved. In civil actions dealing with personal matters such as divorce, child custody, and accident suits, such court approval is not required.

Questions as to application of these guidelines for appearances in legal actions should be referred to the Regional Counsel or Office of General Counsel. *

c. Selection

(1) General Qualifications:

(a) Length - Furloughs are intended to assist in the attainment of correctional goals for offenders and usually range from 3 to 7 days in length. Offenders who are within six months of a firm release date and within the criteria of Section 5, c, may be considered for 1 furlough per month and offenders who are not within six months of a firm release date may be considered for 1 furlough each three months.

(b) Custody - Ordinarily, an inmate must have full minimum custody to be considered for a furlough

(c) A furlough candidate shall be physically and mentally capable of completing the trip without escort.

(d) A furlough candidate shall have demonstrated a level of responsibility which will provide reasonable assurance that the offender will comply fully with the furlough requirements.

* (e) Each furlough request shall be investigated by the case management staff to verify the situation and to assess the suitability of the requested furlough. This investigation shall include direct staff communication with the proposed furlough principals (family, employer, etc.). Documentation of these contacts shall be detailed and made a part of the Central File. With the exception of furloughs of short duration within the immediate vicinity of the institution, this investigation should include contact with the appropriate U. S. Probation Officer. The purpose of this contact is to alert the Probation Office to the fact that the offender may be coming back into his district and to learn of any significant new information the staff should have available at the time they consider approving the furlough. In the event the Probation Officer indicates he does not believe the furlough to be appropriate, the Warden may still approve but must document his reasons.

(f) Case Management staff shall document the purpose and the accomplishment of each furlough granted. This report shall be made a part of the Central File.

(g) In all cases the Regional Director and the appropriate Central Office authority shall be notified of any furlough being granted to an offender whose presence in the community could create concern.

(2) Exceptions - Ordinarily, furloughs will not be granted for persons identified with large scale criminal activity, for offenders convicted of serious crimes against the person, for persons whose presence in the community would attract undue attention or create unusual concern, or for persons obtaining medical or dental treatment not funded by the Bureau of Prisons. Any approvals for these exceptional cases must follow specific guidelines.

* (a) all furloughs for persons identified with large scale organized criminal activity must be approved by the Assistant Director, Correctional Programs Division. Each case will be considered on an individual basis. Furlough eligibility will be determined primarily by the degree of involvement in organized criminal activity.

(b) All furloughs for offenders convicted of serious crimes against the person may be approved by the Warden or Chief Executive Officer, but a special memorandum must be written for the file giving the rationale for approval of the furlough.

(c) Furloughs for persons whose presence in the community would attract undue public attention or create unusual concern must be referred to the Regional Director for approval.

(d) All furloughs for medical or dental treatment must be approved by the Assistant Director, Correctional Programs Division and the Medical Director.

d. Records and Reports - The following requirements are temporary pending further revision of the Inmate Information System.

* (1) An overnight furlough shall be reported as discharge and admission on BP 2 and 1.

* (2) Each institution shall complete the standardized furlough form for each furlough granted regardless of duration and this form shall be approved in advance by the Warden or Acting Warden. A copy of each of these forms will be maintained locally in a chronological file to serve as the basis for a monitoring system in terms of rationale, destination, and numbers of furloughs.

6. IMPLEMENTATION

a. Furloughs represent a program through which the offender's alienation from family and community may be minimized. Additionally, performance on furlough provides a reality measure of release readiness.

b. It is expected that each designated furlough purpose will be applicable to some offenders in all institutions. Wide variations in population characteristics will serve to differentiate furlough use among institutions in terms of frequency, duration and proximity to release date. It is expected that offenders for whom more liberal furloughs may be indicated will be transferred to other appropriate facilities. Local policy issuances should differentiate implementation in accordance with such factors as age, length of sentence, and nature of the offense for which committed. The more liberal use of furlough for participation in family and selected community activities should be reserved primarily for offenders who are within six months of a firm release or parole eligibility date or who are already involved in community based programs.

c. It is important that each offender with the demonstrated need and qualifications for furlough programming have opportunity for partic pation and not be involuntarily deprived of opportunity for partici pation by reason of institutional assignment or other circumstances

d. We began moving slowly on our first experiences with furloughs in 1965 and have built upon the knowledge and experience gained. Like wise, it should be our general policy to proceed slowly as we now extend limits for granting furloughs so that we may benefit from our further knowledge and experience. It is our intention to close monitor general furlough utilization on a month-to-month basis.

7. SPECIAL CASES

a. Offenders in U. S. Marshals custody who are in approved jails and request furloughs shall be granted furloughs in accordance with this policy statement when (1) recommended by recognized responsible official(s), and (2) approved by the appropriate Regional Community Program Manager who will also provide processing instructions. Normally, such furloughs will be granted for emergency purposes only.

b. Offenders in contract Community Treatment Centers, and contract Work Release facilities may be approved for furlough(s) within the guidelines of local policy when it does not exceed the limitation of this policy statement.

* c. Furloughs for long term sentenced offenders boarded in non-federal facilities such as state correctional institutions shall be referre for decision to the appropriate Regional Director by the staff of the state facility.

8. DELEGATION OF AUTHORITY

* a. At the Central Office level, authority to approve furloughs as outlined in Paragraph 5,c,(2),(a), and 5,c,(2),(d), is delegated to the Assistant Director, Correctional Programs Division and the Medi Director. At the Regional Office level, the Regional Director is delegated authority to approve furloughs as outlined in Paragraph 5,c,(2),(c). At the institution level, Wardens, Directors, and Superintendents are delegated authority to grant furloughs. For Federal offenders housed in nonfederal facilities as outlined in Paragraph 7 a and b, the Regional Community Programs Manager is delegated authority to grant furloughs. Authority may be further delegated only after the Chief Administrative Officer has reviewed and approved the furlough the first time. That is, authority for approving second and subsequent furloughs may be delegated to an Associate Warden, Department Head or Unit Manager, assuming that the offender's situation remains favorable.

b. Furloughs for any other purpose or in any special circumstance not provided for in this policy statement are to be referred to the Assistant Director, Correctional Programs Division.

9. ACTION The head of each institution will thoroughly disseminate this revised policy statement to all affected staff and assure that the local furlough program is in compliance with this directive.

Local institutional policy statements must be modified to include the amendments and changes made herein. It is not necessary, however, that the amended policy statement be again submitted to the Central Office for approval, if original approval has already been received.

Norman A Carlson

NORMAN A. CARLSON
Director, Bureau of Prisons
Commissioner, Federal Prison Industries, Ir

BUREAU OF PRISONS WASHINGTON, D. C. 20537

Policy Statement

7900.47

4-30-74

SUBJECT: SPECIAL OFFENDERS

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1. PURPOSE. To provide policy guidelines on a system to identify and tabulate information on certain special categories of offenders who require greater case management supervision than the usual case.

2. DIRECTIVES AFFECTED. This Policy Statement supersedes all previous memoranda on this subject.

3. DISCUSSION. A comparatively small proportion of the inmate population presents special prison management problems, and requires special handling. This includes offenders whose offense, background, or activities during or related to confinement suggest the need for especially close supervision to avoid situations which would result in undue adverse public reaction or would represent a threat to a particular inmate, the institution, or the community.

4. POLICY. It is the policy of the Bureau of Prisons to maintain a record of Special Offenders in the Central Office, Washington, D. C. to control the transfer and community activities of inmates who pose special management problems. Inmates who fall into the categories stipulated in this Policy Statement may not be transferred or approved for any community activities without prior approval from the Central Office, Correctional Programs Division.

5. BASIS FOR DESIGNATION. For the purpose of this Policy Statement, an inmate who falls into any of the following categories should be designated "Special Offender".

1. Non-Federal Offenders. Includes all offenders in Bureau of Prisons facilities serving non-federal commitments under a valid contract with the non-federal authority. This does not include offenders serving concurrent federal and non-federal sentences nor District of Columbia offenders unless one of the following categories is applicable.

2. Offense and Prior Record. Cases where official investigative reports show that an offender was involved in sophisticated criminal activity of an organized nature, or was a close or frequent associate of individuals involved in organized criminal activity.

3. Protection Cases. Those offenders whose lives would be in grave danger if confined in the same facility with certain other offenders because of cooperation with the government or other valid reasons.

4. Extreme Custody Risks. Extremely dangerous offenders whose escape attempts or other disruptive activities have placed or would likely place the lives of others in serious danger.

5. Subversives. Members of subversive organizations which advocate overthrow of the government, or violation of the civil rights of others.

6. Cases of Notoriety. Offenders whose cases have caused broad national publicity or whose presence in the community would probably generate undue adverse public reaction.

7. Threats Against High Government Officials. Those serving sentences for making such threats, and offenders who make such threats while confined for unrelated offenses.

8. Other. In the judgment of the Warden, or his designee or Central Office officials designated by the Assistant Director, Correctional Programs Division, any offender who does not fall within the categories above, yet requires especially close supervision for his own protection or the protection of others.

6. PROCEDURE. The Chief Executive Officer of each Bureau of Prisons facility, including Community Treatment Centers, shall assign responsibility for the operation of the Special Offender program to one person.

Institution staff will initially determine that an offender should be indentified as a Special Offender based upon court records, information from the Central Office, or other reliable source. A copy of the offender's completed form BP-5.1 (Sentence Data Summary) shall be forwarded promptly to the Correctional Programs Division, Central Office, attention Population Control. On the reverse of the BP-5.1 and attachments, if necessary, the institution shall report the reasons for the Special Offender designation including all pertinent information. Identifying information must be included regarding other inmates from whom the subject must be separated or his criminal associates. The source of pertinent information should be included if practicable. This material will be reviewed in the Central Office and, if confirmed, added to the Central Office record of Special Offenders. The Central Office official has the responsibility to confirm or deny the designation. In addition to the ordinary classification guidelines, this decision and the decision to approve transfers and community program participation will be based upon a consideration of potential adverse public reaction and potential danger to a particular inmate, the institution or the community.

If designated a Special Offender, an inmate may not be transferred or participate in community programs without prior approval from the Central Office. A stamped notation of this restriction should be placed on the front of the inmate's central file jacket in the institution and on the BP-5 in the Central Office. This stamp should also appear on the form BP-5 (Sentence Computation Record). Justification for the designation must also be readily apparent in his institution central file.

Institutions may honor writs of habeas corpus for production of Special Offenders in United States Courts without prior approval from the Central Office.

In cases where the institution staff is unsure whether a Special Offender designation should be made, the case should be referred to the Central Office for a decision.

All inmates presently designated "Special Case", "Special Offender" or "Stamped Case" based upon earlier memoranda on this subject should be reviewed in light of this Policy Statement.

7. REPORTS. During the first five days of each month, the Chief Executive Officer of each Bureau of Prisons facility shall forward to the Assistant Director, Correctional Programs Division, Central Office a monthly report on the status of Special Offenders in that facility. The report must include a complete alphabetical list of names and institution numbers of all Special Offenders confined there as of midnight on the last day of the preceding month. The report will also include Special Offender traffic during that month - admissions, transfers, releases, writ production, etc., and the category code number from section 5 above.

If no Special Offender traffic occurred during the month, the monthly report may state this, and need not repeat the previous month's listing and report.

Facilities which have no Special Offenders may submit an initial negative report, then submit no further reports until they receive a Special Offender.

8. THIS POLICY IS EFFECTIVE MAY 1, 1974

Norman A Carlson

NORMAN A. CARLSON
Director, Bureau of Prisons

BUREAU OF PRISONS WASHINGTON, D. C. 20537

Policy Statement

2001.6A

10-18-74

SUBJECT: ADMINISTRATIVE REMEDY OF COMPLAINTS INITIATED BY OFFENDERS IN BUREAU OF PRISONS FACILITIES

1. PURPOSE. This Policy Statement authorizes procedures by which offenders may seek formal review of complaints which relate to their imprisonment if informal procedures have not resolved the matter. It establishes the Regional Office as the initial level of appeal from institution determinations.

2. DIRECTIVES AFFECTED. Policy Statement 2001.6 and Operations Memorandum 2001.11 on this subject are superseded.

3. DISCUSSION. Most complaints can be resolved quickly and efficiently through direct contact with staff who are responsible in the particular area of the problem. This is the preferred course of action. Staff awareness of the importance of prompt attention and reply to these routine requests will minimize the use of formal complaint procedures.

A viable complaint procedure will serve the offenders, the administration, and the courts. It will provide the offenders with a systematic procedure whereby issues raised relating to their confinement will receive attention and a written, signed response within a short period of time from the local administration, and from the Regional Office and the Central Office, if appealed.

Such a procedure assists the administration by providing an additional vehicle for internal solution of problems at the level having most direct contact with the offender. It also provides a means for continuous review of administrative decisions and policies. Further, it provides a written record in the event of subsequent judicial or administrative review. A viable Administrative Remedy Procedure should reduce the volume of suits filed in court and will develop an undisputed record of facts which will enable the courts to make more speedy dispositions.

Use of the Administrative Remedy Procedure is the proper avenue of appeal from dispositions of the Institution Discipline Committee or from minor disciplinary actions (Policy Statement 7400.5C).

If the offender cannot resolve his complaint informally, and wishes to utilize this Administrative Remedy Procedure, he shall file his complaint with the Warden or his designee. If not satisfied with the institution's reply, he may appeal to the Regional Director. If he is not satisfied with the Regional Director's response, he may appeal to the Assistant Director, General Counsel and Review.

An offender may, if he chooses, forward his complaint through the Prisoners' Mail Box or he may file his law suit directly with the appropriate court. However, courts frequently require evidence that administrative remedies have been exhausted before ruling on a complaint, and offenders should be so advised.

4. ACTION. The Chief Executive Officer of each Bureau of Prisons facility is responsible for the establishment and monitoring of an Administrative Remedy Procedure which is compatible with the provisions of this Policy Statement. The operation of the program will be the responsibility of the Warden or the Associate Warden. The investigation of complaints and the drafting of the reply should ordinarily be done by department heads or their representatives, subject to review of the Warden or Associate Warden. The final response shall be signed by both the department head or his representative, and the reviewer. Responses to complaints regarding dispositions of the Institution Disciplinary Committee must be signed by the Chief Executive Officer of the institution.

Each Regional Director is responsible for establishing in the Regional Office a procedure for review and response to appeals submitted under this procedure. While the investigation of the complaint may be conducted by the appropriate Regional Office staff member designated by the Regional Director, the typed response (Part B) of form BP-DIR-10 must be signed by the Regional Director.

5. PROCEDURES. All offenders should be advised of this Administrative Remedy Procedure. This can be accomplished, among other means, by posting the local Policy Statement on inmate bulletin boards, through inmate publications and by including it in the admission-orientation program. Where appropriate, the local Policy Statement should be translated into Spanish.

It is suggested that the forms be maintained by the Correctional Counselors wherever practicable. Experience has demonstrated that complaints can frequently be resolved by the counselor.

Institutions shall maintain a monthly log of complaints filed under this procedure. The attached institution log sheet should be locally reproduced and used for this purpose. At the beginning of each month, a copy of the completed log for the two previous months should be sent to the Regional Director and to the Central Office, Office of General Counsel and Review.

Regional Offices shall maintain a monthly log of appeals filed under this procedure. The attached regional log should be reproduced locally and used for this purpose. At the beginning of each month, a copy of the Regional Office log for the previous two months should be forwarded to the Central Office, Office of General Counsel and Review.

The following Subject Codes will be used in the logs to describe the subject of the complaint. If more than one subject is raised, use the single code which best describes the principal complaint.

SUBJECT CODES

1. Transfer - excluding CTCs
2. Institutional Program Assignment - generally, including custody, MSA
3. Community Communications - including mail, visits, phone
4. Community Programs - including CTCs, furloughs
5. Disciplinary Matters - generally, including segregation, loss of good time
6. Institution Operations - generally, including food, clothing, sanitation, personal property. Does not include subjects described better in categories 2, 3, or 5.
7. Medical
8. Legal - generally, including jail time, detainers, sentence computation
9. Parole - generally, including parole reports, release plans
10. Complaints Against Staff
11. Other - specify

6. USE OF THE COMPLAINT FORM. If an offender cannot resolve his complaint through informal contact with staff, and wishes to file a formal complaint for administrative remedy, he should secure a copy of form BP-DIR-9 and write his complaint in the space provided. He may obtain assistance from other offenders or from staff to help him complete the form. The offender should then give the completed form to the designated staff member who in turn will provide a signed receipt for him. Distribution of the copies of each form is noted on each page.

The complaint ordinarily must be filed within 30 days from the date on which the basis of the complaint occurred unless it was not feasible to file within such period. Institution staff have up to 15 days from receipt of the complaint, excluding week-ends and holidays, to act upon the matter and provide a written response to the offender. When the complaint is of an emergency nature and threatens the offender's immediate health or welfare, reply must be made as soon as possible, and within 48 hours from receipt of the complaint. The institution duty officer may be utilized in such instances.

When the proper course of action is determined, the "Response" (Part B) should be completed and signed. One copy should go to his central file, and original and other two copies given to the offender. Responses should be made as quickly as possible, should be based upon facts which pertain specifically to the issue, and should deal only with the issue raised, and not include extraneous material.

If an offender is not satisfied with the institution's response, he may file an appeal to the Regional Director, Bureau of Prisons, through the Prisoners' Mail Box within 30 days of receipt of the Warden's response. This should be done on form BP-DIR-10 and must include a completed copy of BP-DIR-9 (the initial complaint) with the institution's response. A receipt for his appeal will be sent to the offender by the Regional Director, who will then reply within 20 days from receipt of the appeal, excluding week-ends and holidays.

If the offender is not satisfied with the reply from the Regional Director, he may file a further appeal to the Assistant Director, Office of General Counsel and Review, Bureau of Prisons, through the Prisoners' Mail Box within 30 days of receipt of the Regional Director's response. This should be done on form BP-DIR-11, and must include a completed copy of both the form BP-DIR-9 (the original complaint) and the form BP-DIR-10 (appeal to the Regional Director). A receipt for this appeal will be sent to the offender and within 20 days from that date, excluding week-ends and holidays, a reply will be made.

If an offenders' complaint is of a sensitive nature, and he reasonably believes he would be adversely affected if it is known at the institution that he is making the complaint, he may file it directly with the Regional Director, Bureau of Prisons through the Prisoners' Mail Box. In such cases, he must clearly explain the reason for not filing in the institution. The Regional Office will send the offender a receipt, and reply in 20 days, excluding week-ends and holidays.

If the time limit expires without a reply, it will be deemed to be a denial of the request. If dissatisfied with the response to his complaint and appeals, the offender is free to file suit in an appropriate court and attach documentary proof that he exhausted his administrative remedy.

7. EXCEPTIONS. Nothing in this Policy Statement should be construed to affect in any way, the separate procedure established pursuant to the Federal Tort Claims Act, or the Claims for Inmate Injury Compensation under 18, USC, 4126.

The period of time referred to for action by the reviewing officials may be extended for a like period upon a finding that the circumstances are such that the initial period is insufficient to make an appropriate decision. This must be communicated in writing to the offender.

8. LOCAL ISSUANCE. The head of each Bureau of Prisons facility will revise his local Policy Statement on this subject to incorporate these changes, and forward a completed copy to his respective Regional Office and to the Office of General Counsel and Review.

9. THIS POLICY IS EFFECTIVE NOVEMBER 1, 1974.

Norman A Carlson

NORMAN A. CARLSON
Director, Bureau of Prisons

The Bureau of Prisons Policy Statement No. 7200.11A, on Classification Study and Initial Classification, dated March 6, 1972, provides in relevant part:

1. *POLICY.* It is the policy of the Bureau of Prisons to identify and utilize all available training and treatment resources in the correction of public offenders. This allocation of resources is implemented through a systematic classification of offenders and subsequent development of an individual program plan. Since the Classification Study provides the basis for developing an effective treatment program, it is essential for the report to be of professional quality and represent the integrity and best efforts of the classification team or committee.

* * * *

4. *CLASSIFICATION STUDY.* The Classification Study is a composite of reports and forms submitted by various departments within the institutions and represents the staff's effort to identify the offender's needs and develop a correctional treatment program to meet those needs. To facilitate the review of pertinent information contained in these reports, the study will be arranged according to the following sequence;

A. Sentence Data Summary, BP 5-1

B. Background Data, Record Form 16

C. Staff Evaluation

D. Classification Summary

E. Optional Pages, Psychiatric, Psychological and/or Religious Reports

F. Program Analysis Sheet, BP Form 6.1

G. Program Plan, Classification Form 18

H. Educational Data, BP Form 7

I. Social Data, BP Form 6

J. Medical and Related Data, BP Form 8

5. *INSTRUCTIONS FOR PREPARING THE CLASSIFICATION STUDY.* In order to assure that all Classification Studies meet Bureau requirements, the following instructions should be made available to all personnel involved in the classification process. The instructions should be referred to frequently both as a guide in completing daily work requirements and as a vehicle for training.

A. *Resource Material.* Generally, resource material such as the F.B.I. Fingerprint Report, U.S. Attorney Report, Prosecuting Agency Report, and the Presentence Investigation is made available and serves as the basis for the Classification Study. It is not necessary to reiterate all the information contained in the background material but all relevant and significant information should be summarized so that the Classification Study will be an

independent report capable of standing on its own.

The Presentence Report will continue to be the major contributing resource in the preparation of the Classification Study and to the extent that it is possible, arrangements will be made to have a copy of this report mailed to the institution so that it will be available upon the offender's arrival.

The caseworker will especially need to thoroughly review the Presentence Report in an effort to coordinate his interviews so that he will be able to obtain information that will fill-in, compliment, and amplify areas in the Presentence Report that require elaboration. Interviews should not be used to gather irrelevant data, but should be considered as a probing and diagnostic tool to provide information for evaluating causative factors in the offender's involvement in crime.

When a Presentence Report is not available, all personnel involved in preparing segments of the Classification Summary will have to make a greater effort to obtain the necessary information for effective program planning. Caseworkers should pay particular attention to reports received from other departments and conduct their interviews in a way that will aid them in filling in missing information and expand on other areas when neces-

sary. Under these circumstances, the Classification Summary will be presented in much more detail then would be required if a Presentence Investigation Report were available.

* * * *

D. *Classification Summary.* The Classification Summary is the report that brings together information which is known about the offender's criminality, past history, and current status. In the past, this report was very brief and was designed to supplement the Presentence Report and be used in conjunction with it. The previous Classification Summary format and instructions have not produced the kind of information necessary to make enlightened case management decisions without a lengthy research of the files. It has also been noted that Classification Summaries are deficient in many instances and often inconsistent with other segments of the Classification Study. In an effort to correct this problem the Classification Summary has been revised and extended and a Staff Evaluation has been added to the Study. A sample of the format to be used for Classification Summaries is attached. All institutions should plan to reproduce this format on classification form 1b until such time that revised form 17 is made available. Once the revised classification form 17 is available, it will be used as

the face sheet of the Classification Summary and form 1b will continue to be used for subsequent pages, including the Staff Evaluation.

(1) *Current Offense.* The section on current offense should provide the necessary information to determine whether or not the offense was a joint undertaking or an independent venture, a single act or part of a series of acts, situational or a culmination of extended planning. The victim's loss and the offender's net gain should also be summarized in this section. Information under current offense should be divided into two parts.

a. *Official Version and Sentence.* It is necessary for this part of the report to be lengthy. Information related to the offense, basic sentencing data, role of the offender, codefendants, loss to the victim and aggravating circumstances can be generally presented in a few sentences.

b. *Offender's Explanation.* The offender's explanation regarding the offense is essential and should include comments regarding degree of involvement, motivation, and net gain. Again, the explanation need not be long and should represent the caseworker's interpretive summary of what the offender said.

(2) *Prior Record.* It is not necessary to list the prior record in chronological order, or to describe every incident. It is important, however, to distinguish between assaultive acts and crimes against property, between misdemeanors and felonies and between juvenile and adult offenses. The material will be summarized in two parts.

a. *Summary.* In the summary, the caseworker should stress the number and types of arrest, convictions and sentences, and response to previous supervision while confined or under parole or probation supervision. An attempt should also be made to explain any substantial period for which there were no new offenses reported.

b. *Detainers.* A brief statement regarding the status of all known charges and detainers should be made.

(3) *Past History.* Although the Presentence Investigation and other resource material provides a vast amount of information regarding the offender's background, the Classification Summary should concentrate on summarizing relevant information related to the offender's social, educational, military, and employment history. The facts should be presented as succinctly as possible, stressing only that in-

formation which might be related to the offender's criminality.

a. *Social.* In a few sentences, the caseworker should attempt to identify any areas in the offender's social history which may have contributed to his involvement in crime. This might include the neighborhood, family relationships, marriage, physical, and mental health. Detailed information such as the father's place of birth is not necessary or desirable.

b. *Education.* At this point, the caseworker should provide only a brief statement regarding the offender's response to his educational experience, i.e., his adjustment in school and his achievements.

c. *Military.* Again, only a brief statement regarding the offender's military obligation is required. Comment on his status with the Selective Service Board and response to military experience if applicable, i.e., training, adjustment, discharge.

d. *Employment.* This portion of the Classification Summary should provide a concise summary of the offender's total employment experience. The caseworker should attempt to describe the number and types of previous jobs

held by the offender. Adjustment on the job and significant periods of unemployment should also be explained.

(4) *Current Findings.* During the initial classification process, the offender is tested, given a physical examination, interviewed, and observed to gain additional information about his character, physical and mental health and ability to change. Information obtained from these sources should be summarized under the following headings of Character Traits, Physical and Mental Health and Tests.

a. *Character Traits.* The caseworker should make a brief statement regarding the offender's assets and liabilities related to self-control, interpersonal relationships, standards and values. This statement should be drawn from information received from various departments within the institution regarding the offender's behavior, relationship with others and personal habits. As in all other segments of the Classification Summary, opinions should be avoided and the statement should be based on facts.

b. *Physical and Mental Health.* In most situations, a brief statement of the current findings regarding the offend-

er's physical and mental health will be sufficient. If problems are diagnosed, however, the caseworker should indicate the extent and nature of the problems and comment on employability. If indicated, a more extensive report on mental and physical health can be added to the Classification Study under the section entitled "Optional Pages".

c. *Tests.* Each institution administers a number of tests to measure an offender's current standing and potential for achievement. The results of these tests plus an interpretative summary must be made available to the caseworker so that he can incorporate it in the Classification Summary. The caseworker will list all tests given and summarize what the results mean in terms of training and treatment. Any information which is available regarding testing prior to the offender's arrival at the institution should also be summarized.

6. *STAFF EVALUATION.* The Classification Study has been extended to include a comprehensive staff evaluation. The evaluation will not exceed four paragraphs and generally one typewritten page. This report represents the com-

bined opinion of the Classification Committee or Team and is written in a way which stresses an evaluation of the facts. It will be subjective and judgmental in nature and based on suppositions. Even though it covers some of the same areas as the Classification Summary, the *Classification Summary only reports on facts.* The staff evaluation provided your opinion regarding those facts. The staff evaluation should be reproduced on Classification Form 1b with the date being typed in following the registration number, as indicated on the attached sample.

A. *Illegal Behavior.* In this paragraph, the caseworker should summarize the Classification Committee's or Team's opinion regarding the offender's involvement in crime. Emphasis should be placed on his current attitude regarding the offense, codefendants, his prior record, and pending charges. Some statement regarding his potential for future involvement should also be recorded.

B. *Causal Factors.* The Classification Committee or Team should formulate a theory regarding the offender's criminality and present situation. Such factors as the use of drugs, family problems, health, lack of education and training, emotional and psychiatric problems should be considered and an opinion expressed regarding their probable contribution to the offender's current situation and life style.

C. *Program Goals.* The third paragraph of the Staff Evaluation should provide a summary

of the offender's correctional treatment and training needs and his program plan. Further, a statement regarding his or her willingness to take advantage of the available resources and an estimated time for completing the program should be included.

D. *Release Plans.* The final portion of the Staff Evaluation should give an opinion regarding the offender's release needs, anticipated release date, and parole readiness for commitments under the Youth Corrections Act, 4208 a-2. and the Federal Juvenile Delinquency Act. Available resources should also be evaluated along with the offender's post commitment plans.

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9. *PROGRAM PLAN.* The Program Plan continues to be an important guide in establishing an effective treatment program for offenders.

A. The Staff Evaluation paragraph should be deleted, however, and a new paragraph entitled Transfer Recommendation, should be added. If it appears that the offender is not suitably classified for the program at your facility, the paragraph of Transfer should be completed and explain your rationale for moving him to another facility.

B. *Environmental Factors.* The correctional factors to be considered in this area are those of Economic Status and Family Conditions. If the staff decision is to apply treatment resources in these areas, the goals of the treatment shall first be spelled out in such a way that progress can be noted and achievement documented. The program to be followed should be outlined in equally specific terms. The form permits variation of review dates if this is considered advisable.

C. *Health.* This section applies to both mental and physical health. Medical goals are sometimes independent of other treatment goals. However, where possible, these decisions should be integrated with other factors such as sentence length, training programs, transfer plans, etc.

D. *Skills.* Both educational and vocational areas should be considered in this area of planning. If resources are to be applied in either or both areas, the goals should be clearly stated. Relatively speaking, it is easier to state goals in measurable terms in these fields than in most of the others. Both goals and program, therefore should be phrased in measurable concrete terms.

E. *Character Traits.* In this section, we consider the correctional factors of self-control, interpersonal relationships, standards and values, and aspirations. These terms and concepts are the most difficult to deal with in measurable behavioral terms and yet the most vital elements of progress are contained here.

Each classification group must make a continuous, sincere effort to state their goals, and their plans to achieve them, in behavioral terms. From this effort we should reap improved and refined ideas and ways of expressing them.

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